U-601

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 160.

FRANCIS MUNSON, APPELLANT,

vs.

THE MAYOR, ALDERMEN AND COMMONALTY OF THE CITY OF NEW YORK, AND THE COMPTROLLER THEREOF.

No. 161.

THE MAYOR, ALDERMEN AND COMMONALTY OF THE CITY OF NEW YORK, AND THE COMPTROLLER THEREOF, APPELLANTS,

vs.

FRANCIS MUNSON.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 27, 1884.

accession 21815

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1 The President of the United States of America to the Mayor, Aldermen, and Commonalty of the City of New York and the Comptroller thereof, Greeting:

You are hereby commanded that you and each of you personally appear before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit *court*, in equity, on the first Monday of December, A. D. 1884, wherever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by Francis Munson, and do further and receive what the said court shall have considered in that behalf; and this you are not to omit under the penalty on you and each of you of two hundred and fifty dollars.

Witness Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New York, on the seventh day of November, in the year one thousand eight hundred and eighty-four, and of the Independence of the United States of America the ninety-ninth.

[L. S.] KENNETH G. WHITE, *Clerk.*

ROYAL S. CRANE, *Compl't's Sol'r.*

The defendants are required to enter appearance in the above cause in the clerk's office of this court on or before the first Monday of December, 1874, or the bill will be taken *pro confesso* against them.

K. G. W., *Clerk.*

2 (Endorsed:) I hereby certify that on the 11 day of Nov., 1874, at the city of New York, in my district, I personally served the within subpœna in equity upon the within-named defendant, The Comptroller of the City of New York, by exhibiting to Andrew H. Green, said comptroller, the within original, and at the same time leaving with him a copy thereof. Dated December 4, 1874. (S'g'd) Oliver Fiske, U. S. marshal, S. D. N. Y. Filed Dec. 4, '74.

3 (Subpœna further endorsed:) I hereby certify that on the 9 day of November, 1874, at the city of New York, in my district, I personally served the within subpœna in equity upon the within-named defendant, The Mayor of the City of New York, by exhibiting to W. F. Havermeyer, said mayor, the within original, and at the same time leaving with him a copy thereof. Dated December 4, 1874. (S'g'd) Oliver Fiske, U. S. marshal, S. D. N. Y.

4 Circuit Court of the United States, Southern District of New York. In Equity.

FRANCIS MUNSON
against
THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK AND THE COMPTROLLER THEREOF.

To the honorable judges of the circuit court of the United States for the second circuit and southern district of New York:

Francis Munson, who is a citizen of the United States and of the State of Illinois, brings this bill of complaint into this court against

The Mayor, Aldermen, and Commonalty of the City of New York and the Comptroller thereof, and hereupon your orator complains and says—

That on and prior to the second day of April, 1867, your orator was a citizen of the United States, and was the original and first inventor of a certain new and useful improvement in preserving, filing, and cancelling bonds, coupons, certificates of stock, &c.; that said invention was new at the said time, and that it was then and is now exceedingly useful, and that the same was not known or used by others before the said invention thereof by your orator, and
5 was not at the time of his application for letters patent hereinafter mentioned in public use or on sale with his consent or allowance, as the inventor thereof, contrary to the provisions of the statutes in such case made and provided.

And your orator further shows unto your honors that your orator, being as aforesaid the original and first inventor of said improvement, made application in due form of law to the Commissioner of Patents for letters patent of the United States therefor, and that thereupon and after the proceedings had letters patent in due form of law were duly issued and delivered to your orator for the said invention in the name of the United States of America, under the seal of the Patent Office, signed by the Secretary of the Interior, countersigned by the said Commissioner of Patents, and bearing date on the second day of April, 1867, whereby there was granted and secured unto your orator for the term of seventeen years from the said second day of April, 1867, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention, a description whereof in the words of your orator was given in the schedule annexed to said letters patent and making a part of the same.

And your orator further shows that he is in the full enjoyment of all the rights and interests acquired by him as aforesaid, and that said rights and interests have been and are of great value to your orator, and your orator is entitled to all the damages caused or occasioned by the infringment of the said letters patent by the manufacture, sale, or use of the said improvement in preserving, filing, and cancelling bonds, coupons, certificates of stock, &c., made in violation of the said letters patent, and is by law entitled to sue for and receive the same to his own use.

6 And your orator further shows unto your honors that the defendant above named is a municipal corporation long since created by and now existing under and by virtue of the laws of the State of New York.

That said defendant, its agents, employees, and officers, well knowing the premises and rights secured to your orator as aforesaid, but contriving and wrongfully intending to injure your orator and deprive your orator of the gains, profits, and advantages which he might and otherwise would have acquired, have been for a long time past and since the granting of the said letters patent and within the jurisdiction of this honorable court, unlawfully and wrongfully and in violation of said letters patent, making and using to a consider-

able extent the said improvement and invention, and that the said manufacture and use by the said defendant were and are without the license or permission of your orator and against the will of your orator making or using the same within the southern district of New York as aforesaid, and that the same continues.

That the said defendant, through its officers, have for a long time past been, and still continues to be, making and employing and using substantially the aforesaid improvement, patented by the said letters patent, in violation and infringement of the aforesaid rights and privileges of your orator, but to what extent the said defendant has made, employed, and used your orator is ignorant and cannot set forth; but your orator avers that the said defendant has made, employed, and used the said improvement to a very great extent, and that it has derived, and is still deriving, great benefit therefrom in the conducting and carrying on the municipal affairs and operations thereof, but to what extent your orator is ignorant and
7 cannot set forth, and he prays that the officers of the financial departments of the said defendants may be compelled to make a full disclosure thereof.

And your orator further shows unto your honors that the said defendant, through its proper officers, have been repeatedly notified and warned to desist from such unlawful and wrongful manufacture and use of said improvement as aforesaid; but the said defendant has totally disregarded such notice and warning, and has refused, and still refuses, to pay your orator any of the profits which the defendant has realized, or to account to or pay to your orator any sum whatever by reason of such unlawful acts and doings by the said defendant, or to discontinue the making and use thereof, thereby causing your orator great and irreparable damage; which said actings and doings of the said defendant are contrary to equity and good conscience and tend to the manifest injury of your orator in the premises.

In consideration whereof, and forasmuch as your orator can only have adequate relief in this honorable court, where matters and things of this sort are made cognizable by statute, to the end, therefore, that the said defendants, its agents and officers, may, if they or either of them can, show why your orator should not have the relief prayed for, and may, upon their and each of their corporal oaths and according to the best and utmost of their and each of their knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to the matters and things hereinbefore set forth, and that the said defendant may answer the premises and may be decreed to pay to your orator the damages suffered by your orator from or by reason of the aforesaid violation and infringement of the said letters patent hereinbefore set forth, by unlawfully and wrongfully making or using the said invention or improvement:

8 And may it please your honors, the premises considered, to grant unto your orator the writ of injunction issuing out of and under the seal of this honorable court or issued by one of your honors, according to the form of the statute in such case made

and provided, perpetually enjoining and restraining the defendant, its officers, agents, and employees of every kind, and each and every one of them, from directly or indirectly violating or infringing upon the said letters patent hereinbefore set forth by making or using any book or register with pages therein wherein can or may be used the said improvement, constructed substantially on the plan of and containing or embodying and made according to said improvement or invention described in or secured thereby; and also a writ of preliminary or provisional injunction so restraining and enjoining the said defendant, its officers, agents, or employees, pending this suit.

And may it also please your honors to grant unto your orator the writ of subpœna as *ad respondendum* directed to the said defendant, and commanding it, on a day certain to be named, to be and appear in this honorable court, then and there to answer the premises and to stand to, perform, and abide such further order, direction, and decree as may be made against it.

FRANCIS MUNSON.

ROYAL S. CRANE,
Solicitor and of Counsel for Complainant,
7 Warren Street, New York City.

UNITED STATES OF AMERICA, *Northern District of Illinois:*

Francis Munson, being duly sworn, deposes and says that he is the complainant named in the foregoing bill subscribed by him;
9 that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

FRANCIS MUNSON.

Subscribed and sworn to before me this 14th day of October, 1874.

E. A. DRUMMOND,
U. S. Com'r, Northern District of Illinois.

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify that I am well acquainted with the handwriting of E. A. Drummond, whose name is subscribed to the foregoing certificate, and that the same is his genuine signature, and that he was at the time of signing the same and is now a United States commissioner, duly appointed, qualified, and commissioned by said court, and that as such full faith and credit are and of right ought to be given to all his official acts.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at my office in Chicago, in said district, this 14th day of October, A. D. 1874.

[SEAL.] WM. H. BRADLEY, *Clerk.*

(Endorsed :) U. S. circuit court. Francis Munson ag'st The Mayor, Aldermen, and Commonalty of the City of New York. Bill in equity. Royal S. Crane, compl't's solicitor, 7 Warren St., N. Y. Filed Nov. 7, 1874.

10 U. S. Circuit Court for the Southern District of New York in the Second Circuit.

FRANCIS MUNSON, Compl't,

ag'st

THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK, Def'ts.

SIR: You will please take notice that I am retained by the above-named defendants in this suit, and they hereby appear herein by me, as their solicitor, and you will please enter an appearance accordingly.

New York, December 4, 1874.

Yours, &c., E. DELAFIELD SMITH,

Counsel to the Corporation, Solicitor for Def'ts.

To Kenneth G. White, Esq., clerk U. S. circuit court, southern dist. New York.

11 (Endorsed:) U. S. circuit court. Francis Munson *vs.* The Mayor, Aldermen, & Commonalty of the City of New York. Appearance. Filed Dec. 4, 1874. E. Delafield Smith, counsel to the corporation, sol'r for def'ts, 2 Tryon Row, N. Y. city. To K. G. White, Esq., 39 Chambers St., clerk U. S. circuit court.

12 Circuit Court of the United States, Southern District of New York. In Equity.

FRANCIS MUNSON

vs.

THE MAYOR, ALDERMEN AND COMMONALTY OF THE CITY OF NEW YORK.

The answer of The Mayor, Aldermen, and Commonalty of the City of New York, defendants, to the bill of complaint of Francis Munson, complainant.

These defendants, now and at all times hereafter, saving and reserving to themselves all and all manner of benefit and advantage of exception that can or may be had or taken to the many errors, uncertainties, imperfections, and insufficiencies in the complainant's said bill of complaint contained, for plea and answer thereunto, or to so much thereof as these defendants are advised it is *im*material or necessary for them to plead and make answer unto, say:

I. These defendants admit that they are a municipal corporation, created and existing by and under their ancient charters and the laws of the State of New York.

II. These defendants admit that there have been issued and
13 delivered to the said complainant certain alleged and pretended letters patent of the United States, bearing date the 2d day of April, 1867, and numbered 63419, which alleged and pretended letters patent are signed by the then acting Secretary of the Interior and countersigned by the then Commissioner of Patents, and which pretend and purport to grant to said complainant, his heirs, administrators, and assigns, for the term of seventeen years from the 2d day of April, 1867, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, a certain alleged and pretended improvement in filing and recording bonds, &c., in the schedule annexed to said alleged and pretended letters patent described; but at what time said alleged and pretended letters patent were issued to said complainant these defendants have not knowledge or information sufficient to form a belief.

III. These defendants deny, upon information and belief, that said complainant was the first — original inventor of the said alleged and pretended improvement in filing and recording bonds, &c., mentioned and described in the complainant's said alleged letters patent, numbered 63419 and dated April 2d, 1867, or of any substantial or material part thereof; and they allege, upon information and belief, that long prior to the alleged invention thereof by him, said complainant, the said improvement described and mentioned in said letters patent was known to and used by the following-named persons, among others, at the places named, to wit: William E. Warren, who resides in the city of New York, at the city of New York; John L. Davenport, who resides in the city of New York, at the city of New York; John O'Brien, who resides in the city of New York, at the city of New York, and S. P. B. Hig-
14 gins, who does business at Wall Street, in New York city, and resides on Long Island, at the city of New York.

IV. And these defendants deny that they have made any profit from the violation of said pretended and alleged letters patent numbered 63419, as charged; but these defendants allege and aver, upon information and belief, that the method used by them for preserving and recording and registering coupons, &c., was known to and used by (among others) the persons named in the above paragraph numbered III, at the places therein named, long prior to the 2d day of April, 1867, and long prior to the time of the alleged invention by said complainant of the said alleged and pretended improvement in the said pretended letters patent mentioned.

V. And these defendants, for futher plea and answer to the complainant's said bill of complaint, say that, as they are advised and believe, the said alleged and pretended improvement in said alleged letters patent and said bill of complaint mentioned is not and was not on the 2d day of April, 1867, nor at any other time, an improvement on any art, machine, manufacture, or composition of matter within the meaning and intention of the act of Congress, approved July 4th, 1836, entitled "An act to promote the progress of

useful arts and to repeal all acts and parts of acts heretofore made for that purpose," nor was nor is the same a design within the meaning and intention of the act of Congress, approved March 2d, 1861, entitled "An act in addition to an act to promote the progress of the useful arts."

VI. Wherefore these defendants say that the complainant is not entitled to an injunction, nor to an account, nor to costs, nor to any other relief as prayed for by him in his said bill of complaint, without this, that any other matter or thing material or necessary for these defendants to make answer unto and not herein or hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in that behalf most wrongfully sustained.

THE MAYOR, ALDERMEN, AND
COMMONALTY OF NEW YORK,
By ABRAHAM L. EARLE,
Deputy Comptroller.

E. DELAFIELD SMITH,
Counsel to the Corporation, Solicitor for Defendants.

CITY AND COUNTY OF NEW YORK,
Southern District of New York, in the Second Circuit, } ss:

On this 19th day of January, 1875, before me, Charles W. Laurence, a notary public in and for the said county of New York, comes Abraham L. Earle, who, being by me duly sworn, deposes and says that he is the deputy comptroller of the city of New York, an officer in the finance department of the mayor, aldermen and commonalty of the city of New York; that he has read and he understands the foregoing answer, and that the same is true to his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

[NOTARIAL SEAL.] C. W. LAURENCE,
Notary Public, City and County of New York.

(Endorsed:) U. S. circuit court. Francis Munson, plaintiff, against The Mayor, Aldermen and Commonalty of the City of New York, defendants. Answer. E. Delafield Smith, counsel to the Corporation, No. 2 Tyron Row, N. Y., solicitor for def'ts. Filed Jan'y 19, 1875.

16 Circuit Court of the United States, Southern District of New York. In Equity.

FRANCIS MUNSON

vs.

THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK AND THE COMPTROLLER THEREOF.

The replication of Francis Munson, the above-named complainant, to the answer of The Mayor, Aldermen, and Commonalty of the City of New York, the above-named defendants.

The repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto says that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the defendant is uncertain, untrue, and insufficient to be replied to by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

Dated New York, January 25th, 1875.

ROYAL S. CRANE,
Complainant's Solicitor.

(Endorsed:) U. S. circuit court, southern district of New York. Francis Munson ag'st The Mayor, &c., of New York. Replication. In equity. Royal S. Crane, compl't's sol'r, 7 Warren St., N. Y. city. Filed Jan'y 27, 1875.

* * * * * * *

17 Circuit Court of the United States for the Southern District of New York. In Equity.

FRANCIS MUNSON

ag'st

THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK AND THE COMPTROLLER THEREOF.

Proofs for final hearing, taken on the part of the complainant in the above cause under and pursuant to the 67th rule in equity as amended, before me, Isaiah T. Williams, examiner, at No. 4 Warren street, New York city.

NEW YORK, *February 9th*, 1875—2 o'clock p. m.

Present: Royal S. Crane, counsel for complainant; T. B. Clarkson, Esq., counsel for def'ts.

Counsel for complainant puts in evidence certified copy of letters patent of the United States granted to Francis Munson, the complainant in this suit, on the 2d day of April, 1867, and known as No. 63419. It is marked Complainant's Exhibit "A." Counsel for complainant puts also in evidence a certified copy of the
18 drawing filed in the Patent Office at the time of applying for the patent. It is marked Complainant's Exhibit "B."

WILLIAM B. CARROLL, a witness of lawful age, produced on the part of the complainant, having been by me first duly cautioned to tell the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by ROYAL S. CRANE, counsel for complainant, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

A. William B. Carroll; age, 23; residence, 71 Madison Ave., N. Y. city; occupation, clerk in the comptroller's office, New York city.

Q. 2. How long have you been in the comptroller's office?

A. About 2 years, from about March 5th, 1873.

Q. 3. Have you appeared here in answer to a subpœna served upon you by the complainant, and have you produced a book or books used by the comptroller of the city of New York, or in his office, wherein are registered or filed paid coupons and bonds?

A. Yes, sir; that is the book.

Book produced and marked in evidence Complainant's Exhibit "C," and is entitled on the backs, "County Bonds, Consolidated Stock, $500, 5431 to 5678, Consolidated Coupon Stock."

Q. 4. State, if you can, how many other books of this same nature, marked in the same way, and used for the same purpose are now used in said comptroller's office.

A. There are 36 books of county bonds, consolidated stock; consolidated coupon stock. There are 18 endorsed county bonds, consolidated stock, $1,000; bonds running from 1 to 4445. There
19 are city bonds, 17 books, $500; bonds from 1 to 4284; city bonds, $1,000, from 1 to 2128—8 books. There are city parks improvement fund bonds, $500.00, from 1 to 862—3 books. $1,000, city parks improvement fund, from 1 to 434—2 books. There are dock bonds, $1,000.00, 1 to 500—2 books. Tax relief bonds, 2 books, $1,000, 1 to 1500, from 1501 to 4500—18 books in all.

Q. 5. The whole number of books in use?

A. 108.

Q. 6. How many pages?

A. The aggregate number of pages in those books is 27,038.

Q. 7. Are each of the pages of these books headed, showing what class of bonds the book refers to, when the bond is due, and the number of the amount for which the bond is given, and the number of the bond?

A. I think they are, except that instead of each page being headed each leaf is headed, leaving one side of the page blank.

Q. 8. Beneath the letters and figures at the top of the pages in all these books is there a skeleton form representing each coupon by the number belonging to the bond which is numbered at the top of the pages?

A. I think all the gold bonds are. The tax relief I don't remember.

Cross-examination by counsel for defendant:

C. Q. 1. In these books how many sides of the pages are divided into squares for the reception of coupons?

A. One side of each leaf.

C. Q. 2. Is that the case with all books?

A. Yes, sir; I think it is.

C. Q. 3. What is on the other side of the leaf?

A. Blank, I think.

20 C. Q. 4. How many of these bonds of which you have spoken as being pasted in are pasted in?

A. I couldn't tell.

C. Q. 5. Are there any more than there are in that book?

A. I think there are in different books.

C. Q. 6. How many are there in Exhibit "C?"

A. 5.

C. Q. 7. How many coupons were there to those bonds originally?

A. 60 to each bond.

C. Q. 8. Have all the coupons been detached from the bonds?

A. No, sir.

C. Q. 9. How many have been detached from each of the five bonds?

A. 6.

C. Q. 10. Are those coupons pasted in that book?

A. No, sir; not all of them.

C. Q. 11. Are any of them?

A. Yes, sir.

C. Q. 12. Six coupons have been detached from each bond, you say?

A. Yes, sir.

C. Q. 13. Now, the remainder of the 60 coupons are still attached to the bond; is that so in each case?

A. Yes, sir.

C. Q. 14. To what page are the bonds pasted?

A. The blank page opposite the numbered page corresponding to the number of the bond.

C. Q. 15. How many bonds are there in the comptroller's office preserved and filed by pasting in the books as these 5 bonds in the exhibit are pasted?

A. There are —.

Redirect examination by counsel for complainant:

R. D. Q. 1. These bonds that have been pasted in the book are not yet due, are they?

21 A. No, sir.

R. D. Q. 2. Why were they pasted in the book?

A. It says on the bond that this certificate is exchangeable at the option of the holders for a registered certificate of a like tenor upon its surrender at the comptroller's office in the city of New York.

R. D. Q. 3. And they were surrendered and others given in their places?

A. I don't know whether that is so or not.

R. D. Q. 4. They were surrendered?

A. Yes, sir.

R. D. Q. 5. And cancelled?

A. Yes, sir; the book itself shows they were cancelled by these other bonds to take their place.

R. D. Q. 6. And those books, and each of them that you have spoken of in your testimony, have been used ever since you were in the comptroller's office for the purpose of pasting and filing paid coupons?

A. Yes, sir; they are cancelled by punching a hole in them, each coupon being numbered, and pasted over the corresponding number in the book.

The tax relief coupons are not numbered; you have to put them in by date.

WM. B. CARROL.

Read over, subscribed, and sworn by the witness, Wm. B. Carroll, this 12th day of February, 1875, before me—

I. T. WILLIAMS, *Examiner.*

JOHN BUCKINGHAM, a witness of lawful age, produced on the part of the complainant, having been by me first duly cautioned to tell the truth, the whole truth, and nothing but the truth in the matter of controversy herein, being examined by ROYAL S. CRANE, counsel for complainant, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

22 A. John Buckingham; 29 years of age; residence, 68 Prospect Place, New York city; occupation, in the employ of T. B. Stetson, patent lawyer.

Q. 2. Please state what opportunities you have had for acquiring a knowledge of mechanical and scientific subjects, and also what experience you have had in patent matters.

A. A mechanical draughtsman for 14 years, architectural for 8 years, and more or less patent business for 6.

Q. 3. Have you examined complainant's letters patent marked "Ex. A," and have you examined the design "Ex. B;" if so, do you understand the manner of using the invention therein described?

A. I have examined them and am sufficiently familiar with their application.

Q. 4. Please examine the book or register marked Complainant's "Ex. C," and state whether or not it embodies the invention described in said letters patent marked Exhibits "A" and "B," and give your reasons for your conclusions.

A. I consider that it does, in that it has the distinguished peculiarities of a particular bond on the top of the page; that the page bears the number of a particular bond; that there is a series of consecutive square for all the coupons of said bond.

Q. 4. Are not these pages so squared that each particular coupon for each separate bond has a specific place allotted it on a specific page?

A. They are so squared.

Q. 6. Is this book so arranged that there can be written upon a space allotted to any specific coupon the reason why the same was not or would not be paid?

A. It is so. The squares are——

Defendants' counsel objects to the witness saying anything further on the ground that he has already fully answered the question.

23 C. Q. 7. Have you any explanation to give to the last answer? If so, give it.

A. The squares in this book are numbered to correspond with the numbers upon the coupons.

Q. 8. Would the book marked "Ex. C," if made or used or sold by a party without the consent or authority of the patentee under complainant's letters patent, be, in your opinion, an infringement on said patent? And if your answer is yea, please give your reasons for your opinion.

(Objected to by defendants' counsel on the ground that it is hypothetical; second, that it is not based on any facts so far proved in this case; third, that it is the very question in issue whether this is an infringement or not, and takes it for granted.

A. I do think so, and for the reasons given in my answer to question No. 4, and for the additional reason that the bonds now pasted in this book are pasted in juxtaposition to the coupons.

Q. 9. Is your opinion given in the last answer confirmed by the fact that upon the top of each page of the books marked "Ex. C" the particular series of bonds mentioned is printed, the amount of the bond, and the date when the same becomes due?

Objection by defendants' counsel.

A. It is.

Cross-examination by defendants' counsel:

C. Q. 1. You say you have been engaged in patent business for six years. In what capacity have you been so engaged?

A. My answer was that I have done more or less patent business for six years; I meant to say that I have drawn patents, looked up cases, and written specifications.

24 C. Q. 2. What experience, if any, have you had as an expert in patent cases?

A. This is the first time I have given testimony as an expert in a patent case.

JOHN BUCKINGHAM.

Read over, subscribed, and sworn to by the witness, John Buckingham, this 12th day of February, 1875, before me—

I. T. WILLIAMS, *Examiner.*

Adjourned to Tuesday, Feb'y 16th, 1875, at 2 o'clock p. m.

NEW YORK, *Feb'y 16th*, 1875.

Counsel for both parties appear pursuant to adjournment. Further adjourned without day, to be brought up on two days' notice being given by the defendants to the plaintiff.

Circuit Court of the United States, Southern District of New York.
In Equity.

FRANCIS MUNSON

vs.

THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK.

NEW YORK CITY, *July 12th*, 1875.

Present: Royal S. Crane, counsel for complainant; S. B. Clarkson, counsel for defendants.

FRANCIS MUNSON, being sworn as a witness on behalf of the complainant in rebuttal:

Q. What is your name, age, residence, and occupation?

25 A. Francis Munson; age, 48 years; Chicago, Illinois; bookbinder, printer, and stationer; retired from business at the present time.

Q. 2. Are you the designer and inventor of the improvement in filing, cancelling, and preserving bonds and coupons in registers or books, as shown and described in letters patent of the United States No. 63419, of April 2d, 1867?

A. I am.

Q. 3. Please examine the papers shown you, marked "Complainant's Exhibits A and B," and state if they fully embody and explain your invention.

A. They do.

Q. 4. How long have you been in business as a stationer, bookbinder, and printer?

A. Over thirty years.

Q. 5. Have you, as a stationer, had business relations with corporations and others issuing bonds with coupons attached?

A. I have.

Q. 6. When was your attention first given to the subject of filing, cancelling, and preserving bonds and coupons in registers or books?

Questions objected to by defendant's counsel on the grounds that the evidence is not in rebuttal of evidence produced by defendant, and also that it is irrelevant.

A. In year 1855 or 1856.

Q. 7. When did you first begin to work on the idea?

Defendant's counsel objects as to the previous question.

A. In 1855 or 1856.

Q. 8. In what manner?

Same objection as to the previous questions.

26 A. By pasting coupons which had been paid and cancelled in a scrap-book from each six months' payment consecutively as they were paid.

Q. 9. For yourself or corporations?

A. For the purpose of a protection to corporations issuing bonds and a benefit inuring to myself for the invention.

The above question objected to on same grounds as previous question.

Q. 10. Did you know of any other plan for this purpose prior to patenting your organized system other than the scrap-book form you have referred to?

A. None whatever.

Q. 11. In studying to perfect an organized system what were you aiming to obviate?

Same objection as to the previous questions.

A. I was aiming in my invention to perfect a systemized plan wherein a complete history of a bond and its coupons could be concentrated on a single page of a register or book that could at any time be referred to during its or their life, from the time of issuance to the time of final cancellation.

Q. 12. Have you read the testimony of William E. Warren and John O'Brien, witnesses for the defendant in this case?

A. I have.

Q. 13. Do you fully understand the forms described by them and illustrated by Warren in the diagrams marked Defendant's Exhibits A 1, A 2, and A 3, now shown you?

A. I do.

Q. 14. Please state fully the difference between the forms as shown in those exhibits and described by Warren and O'Brien in their testimony and your definitely organized and patented system.

Defendants' counsel objects to this question on the ground
27 that it calls for his answer to a question proper only for the court to decide, and on the ground, also, that he has not shown himself competent as an expert nor has in any way qualified to describe any system other than his own, nor to properly distinguish his own from any other system.

A. My patented system is the result of long-continued thought and experiment—experiments made to overcome the scrap-book form, in which all the coupons due every six months are pasted in a bunch. My system brings the bond and the coupons together upon a single page, after their cancellation and payment, so that they are

concentrated as originally issued—that is, each bond and its coupons are brought together and become whole again. The form shown me of Warren and described by Warren and O'Brien in their testimony does not accomplish that work or effect, but show the coupons in a scattered condition without being with the bond, and their form has no reference to the bond itself. My plan at once affords an opportunity to note upon the spaces or pages all of the circumstances attending each identical coupon and bond worthy of note during its life; while the form shown by defendant's exhibit and described in Warren's testimony affords an opportunity to reach only the past and present history of the coupons only providing they are paid, but affording no opportunity for any memorandum in regard to coupons which are liable to payment or cancellation in the future.

Q. 15. Do those forms as shown by Warren's and O'Brien's testimony and the exhibit above referred to make any provision whatever for filing the bond itself when paid or canceled in connection with the previously paid or canceled coupons?

28 Same objection by defendant's counsel as to the last previous question and on the ground that the answer required calls for a decision of the very question at issue in this action.

A. They do not.

Q. 16. Do you profess to be an expert in this particular matter and in relation to bonds and coupons?

A. I do; having made the subject of a perfect plan for the absolute protection of parties issuing, purchasing, and handling bonds a study since the years 1855 and 1856 up to the time I obtained my patent. My business has also been the preparation of bonds and coupons for corporations, and I have been thoroughly conversant with all matters pertaining to the issuance of bonds.

Q. 17. State the difference in the usefulness of your organized patented system in relation to a single series of bonds and the form shown and described by Warren and O'Brien in their testimony.

Defendants' counsel objects on the grounds that the witness has not shown himself competent to understand nor describe the advantages and usefulness of Warren's and O'Brien's system, nor of any other system than his own, and that it calls for his judgment and opinions on matters at issue in this action belonging properly to the court, and that it begs the question at issue in this action.

A. My patented systems afford an opportunity to make an immediate reference to any particular bond or the coupons of a series of bonds or to any one of the coupons regarding any question or circumstance connected therewith, past, present, or future. I will illustrate: A certain company having adopted my patented system issues a series of 5,000 bonds of $1,000 each, with coupons attached, payable semi-annually for thirty years, making sixty coupons in

29 all. My set of registers or bond and coupon books prepared for this series of bonds might consist of ten books, paged, con-

secutively, of 500 pages each. Book 1 would be lettered on the back, "Bonds Nos. 1 to 1000;" book No. 2, "Bond No. 1001 to bond 2000;" book No. 3, "Bond No. 2001 to bond 3000," and in a like manner through the whole number of volumes. On the pages would be printed a skeleton form coinciding, &c., with the bond and its coupons, and on which spaces would be placed numbers corresponding to the numbers on the coupons. All of the coupons belonging to bond No. 1 would be pasted, when paid and cancelled, on page No. 1 in the squares bearing their numbers. All coupons of bond No. 2 would be placed on page No. 2, and so on in the case of all the bonds. Thus any reference to bond No. 96 would simply call for an examination of page 96, which would tell the whole story. Said series of bonds are issued to many different parties and distributed throughout the world. Any accident or loss or counterfeit or overissue or duplication would be noted in the proper place in the skeleton form—that is, of any coupon or bond in the series—by turning to the same page as is shown to a small extent in Complainant's Exhibit "B," upon coupons marked 5 and 6 on said exhibit. For instance, bond No. 991 would be referred to on page 991, the coupons of same bond on same page.

John Doe, the owner of bond 991, writes to the treasurer of the company issuing said bond that coupons Nos. 1, 2, and half of No. 3 have been destroyed by rats, fire, or unavoidable accident, as the case may be. The treasurer has opportunity, as indicated in this system, of making or entering in its proper place all the circumstances of the loss or mutilation of coupons 1, 2, and 3 of bond No. 991, thereby protecting the owner or holder of said bond from loss. Bond No. 1005 may have been destroyed with or without its coupons, and on notification the treasurer would make the proper memorandum on the space on the page corresponding with the number of the bond in question, and the owner thereof is thus protected from loss.

In addition to this series of bonds which have been properly issued a dishonest official may have over-issued or duplicated 106 bonds and hypothecated the same, as was the case with Robert Schuyler, late president of the N. Y. & N. H. R. R. As soon as such a fact became known a note could be made of it on the proper pages and payment of the over-issue stopped, and the corporation protected thereby by having notice not to pay the over-issued bonds.

Bond No. 49 is owned and held by Richard Roe. Notice is given to the treasurer of the corporation that said bond and coupons has been stolen.

By my system a memorandum may be made, so that on the presentation of the first coupon due for payment, payment of such coupon would be stopped and possibly the thief captured. In case of cancellation of any bond or series of bonds and issuance of others therefor, my plan affords an opportunity for showing their cancellation and a history of the circumstances connected therewith noted in the proper places on the page corresponding in number with the number of the bond.

According to my system, as each coupon is paid, an opportunity is afforded to place each coupon in its proper and specified place upon a particular page, in a particular book, which book has already been made for the reception of each and every bond and coupons of the series. Bond No. 79 of the series and all the coupons connected therewith may have been paid and cancelled and pasted in the proper places on page 79 of the book, except coupon No. 19, which shows at once that the corporation is indebted to the proper
31 holder of bond No. 79 for the face of said coupon No. 19 and liable for its payment whenever presented, though many years have and may elapse, and when this coupon is presented for payment the treasurer at once turns to the exact book and exact page, where the coupon belongs, for positive information thereto.

By the exhibit of Warren and the testimony of Warren and O'Brien a search for information as to such a coupon would be required through a series of books, involving a loss of time and much trouble. The form used by Warren and O'Brien does not afford an opportunity for an instant memorandum of these incidents and circumstances as above stated, the books which they use being only filled up and completed from time to time as the coupons become due and are paid. My patented system makes one job of printing and binding of the whole series of books, while the form of Warren and O'Brien makes numerous jobs of printing and binding, and is consequently much more expensive.

Q. 18. In the form used by Warren and O'Brien, if a bond had sixty (60) coupons, these coupons would be filed away in sixty (60) different pages, with a quantity of pages intervening and spread through a number of books, would they not?

Objected to on the same ground as *to* the last previous objection, and on further ground that the question is hypothetical, being necessarily based on the hypothesis that the number of bonds issued is greater than can be numbered on any one page.

A. They would.

Q. 19. In your organized plan for what do you provide, as regards time, in the life of the bond?

Objected to on same grounds as last previous detailed objections, and on the grounds that the patent and specification must
32 contain the whole essence and principle of the inventions, and what is patented is only what is there stated.

A. It gives an opportunity for noting the past, present, and future circumstances or history of each identical bond and coupon until payment and final cancellation.

Q. 20. What time does the forms testified to and shown by Warren and O'Brien cover?

Objected to on the same grounds as to last question, and on further grounds that the systems show this for themselves and are to be judged by the court, and the question calls for witnesses' opinions.

A. These forms only cover the past and present to a limited extent and do not afford an opportunity of noting or making memoranda regarding coupons maturing in the future.

Q. 21. According to your form does it need any other book or books for a full protection of the company issuing and the persons holding the bonds and coupons?

A. It does not; my patented plan makes the set of books analogous to a merchant's ledger, as regards bonds and coupons, showing the whole transaction and history as well as present status of each and every bond and its coupons, on each page, in its proper place, without necessary reference to any other books. The form of Warren and O'Brien does not possess this advantage; hence their form is not an infringement or anticipation of my patented plan or system.

Q. 22. Can you say from your own knowledge whether the form of Warren and O'Brien, as shown by their testimony and exhibits, are in any respects, or substantially or materially, like your patented plan?

33 Objected to by defendants' counsel on the same grounds contained in the last detailed objection, and that it calls for an opinion on a matter proper for the court to decide, and one which is submitted to the court by the pleadings in this case.

A. They are not.

Q. 23. Please look at the books now shown you, marked "Complainant's Exhibit C," and state if, to your knowledge, it fully embodied your organized system as patented by you, according to your letters patent of April 2d, 1867.

Objected to on same grounds as those stated in previous objections, and on the further ground that witness has not shown himself an expert, nor competent to judge.

A. It does, unquestionably.

Q. 24. Have you seen your plan as above testified to in use in the comptroller's office in N. Y. city?

Objected to on same grounds as in last previous question.

A. I have this day, July 12th, 1875.

Q. 25. Did you on that occasion see memoranda made in those books in the appropriate places of matters and incidents connected with the bonds and coupons issued by the city of New York?

A. I did, in several instances, in books in said comptroller's office, this day.

Adjourned to 10 o'clock a. m., July 13th, 1875.

NEW YORK, *July 13th*, 1875.

FRANCIS MUNSON cross-examined by the solicitor for the defendants:

C. Q. 1. Mr. Munson, what was your business in 1850, 1851, 1852, 1853, 1854, and 1855?

34 A. A book-binder, printer, and stationer; also a lithographer and manufacturer of bonds and everything pertaining to commercial stationery.

C. Q. 2. Has that been your business from 1850 to 1857?

A. It has been my business from 1843 to 1867.

C. Q. 3. During any of those years were you a clerk in any office where any method of preserving and filing said coupons by pasting in a book was in use?

A. I was not.

C. Q. 4. What called your attention first to this matter of inventing a good method of filing and preserving a coupon?

A. From some observation or seeing the need of some protecting plan or system. The identical circumstance I am unable to give. I was constantly associating and having business with all sorts of officers of corporations in doing their business.

C. Q. 5. Where were you when you began to work up the idea?

A. City of Chicago.

C. Q. 6. Did you ever patent any other method than the one for infringement of which this action is brought?

A. I have not.

C. Q. 7. Did you ever copyright any method?

Objected to as immaterial, inadmissible, not within the pleadings, and not called for by any previous testimony, and not set up in the answer, and as calling for a legal conclusion.

A. I contemplated copyrighting—obtaining a copyright—by depositing in the United States clerk's office a title without perfecting my plan or system, which title was "Munson's patent bond cancelling file."

35 C. Q. 8. When was that deposited in the clerk's office?

A. October 19, 1858.

C. Q. 9. Did you ever deposit in the clerk's office any one of those files?

Same objection as before.

A. I am not able to recollect; not that I recollect of.

C. Q. 10. What did that title refer to?

A. The lapse of time has been so great that I am unable to give a description further than to say that it was a crude form and not the system which I subsequently patented.

C. Q. 11. Wherein did it differ from the system which you subsequently patented?

Objected to as above.

A. That instead of my perfected patented system this was the initiatory or first inception to said patented system, which was a continual study for several years after I filed said title.

C. Q. 12. What part of your patented system did the system of which the title was deposited embody?

Objected to as before and as having been fully answered in the answer to question No. 11.

A. My answer has been fully embodied in my answer to previous questions.

C. Q. 13. Did the system of which you filed the title in the office of the clerk of the United States court embody in it the filing of the bond with the coupons?

Objected to as above.

A. Not as developed in my patented plan, as before stated; the title was a crude idea.

C. Q. 14. Did this crude idea, of which you deposited the
36 title, contemplate the pasting of the coupons belonging to any one bond on the same page with the bond?

Objected to for the same reasons as above.

A. This was simply the pasting of the coupons; the bond did not cut any figure in it; the bonds had nothing to do with it.

C. Q. 15. Did that crude idea of which you have spoken contemplate the pasting of the coupons for filing and preserving in any particular order?

Objected to upon the same grounds as above.

A. I am unable to remember. I was experimenting and studying this matter continually as I had leisure time.

C. Q. 16. Can you give any description or statement of what that crude idea did contemplate as to the method by which coupons were to be filed or order in which they were to be filed?

Same objection.

A. I cannot.

C. Q. 17. Did that crude idea, the title of which you deposited as aforesaid, embody or refer to any particular definite mode or order of filing and preserving coupons in a book?

Same objection as before and as having been previously answered.

A. No.

C. Q. 18. In how many instances is your system in use in the United States?

A. I am unable to state. I know of one instance; that is in the city of New York, in the comptroller's office.

C. Q. 19. Do you know of any other instance besides that?

Objected to as immaterial.

37 A. Not of my own knowledge.

C. Q. 20. Have you any suit in equity or action at law pending against any other person or persons for infringement of your patent?

Objected to as immaterial.

A. I have no other suit pending except this one.

C. Q. 21. Have you had any experience as a mechanical engineer, or draughtsman, or student of mechanics, or mechanical arts and manufacturers?

A. I am a practical mechanic, having served a regular apprenticeship as such for five years, and I have had experience as a mechanic, practically, since 1843, in all matters pertaining to book-binding, printing, lithographing, engraving, and all matters pertaining to general stationary manufacture; consider myself thoroughly posted in the general departments of said business.

C. Q. 22. Have you been a student or practitioner in any other branch of mechanics or mechanical arts or manufacturers?

A. I have to some extent in architecture, architectural drawings, and building operations; am familiar with plans and specifications, the proper materials for ordinary public and private buildings.

C. Q. 23. Have you ever been a witness—called as an expert—in a patent case other than your own?

Objected to as immaterial.

A. I have.

C. Q. 24. In how many other cases?

A. One.

C. Q. 25. Were you interested in that case?

A. I was not.

C. Q. 26. What other system of filing and preserving bonds and coupons or either of them by pasting in a book beside your own and that you described by Messrs. O'Brien & Warren do you know of?

38 A. I know of no perfected system except my own. I consider it no system until it is perfected.

C. Q. 27. Do you know of any system whereby coupons or bonds, or either of them, are filed and preserved by pasting in a book in any definite prearranged order other than your own and those described of Messrs. Warren & O'Brien?

A. I do not, of my own knowledge. I have heard say. I do not consider O'Brien's and Warren's a system.

C. Q. 28. What do you mean by a system?

A. A perfect plan.

C. Q. 29. When do you call a plan perfected?

A. When, in my opinion, no further improvement can be made upon it—when my belief is that no further substantial improvement can be made upon it.

C. Q. 30. What would you call the pasting of bonds or coupons, or both of them, into a book according to a prearranged plan, but which plan might be improved, if you would not call it a system?

A. I should call it an imperfect system—an imperfect plan or form, not a system.

C. Q. 31. Do you know of any imperfect plan or mode of filing and preserving coupons or bonds, or both, by pasting them in a book other than your own and that described by Messrs. O'Brien and Warren?

A. I know of no definite plan. I consider Warren and O'Brien's form as just about the starting point with myself in this patented system of my own.

C. Q. 32. You consider your system perfect, then?

A. Substantially so.

C. Q. 33. If I understand it, then, it is a material part of your patented system that when each bond and the coupons thereto attached have all been paid and cancelled and filed and preserved each page shall represent the bond and coupons in the order and arrangement as originally issued?

39 A. Substantially so; but liable to unimportant changes. That coupon No. 1 and its consecutive coupons may commence either at the top or bottom of the page. On being pasted in, the body of the bond may occupy the whole of the opposite page corresponding with its number, while the coupons may occupy the other page numbered the same, so that two pages may be occupied in receiving the bond and the coupons, with the leaf or leaves folioed or paged with a number corresponding with the bond, for convenience in reducing the size of the book; or the bond and the coupons may occupy only one page, numbered correspondingly. My answer intends to show all of the space devoted to a particular bond and coupons of the same number, correspondingly. This explanation is embodied in my previous answers, each space designated for each coupon having a number the same as the coupon it is intended to receive. I wish to add that a bond may occupy any portion of a page according to its size for convenience, and a portion of the coupons may be received on the same page with the bond, and the rest of the coupons on the opposite page.

Redirect examination by the solicitor for the complainant:

R. D. Q. 1. Is the value of your patent increased, in your opinion, by the fact that the coupons can be more readily found than they could if they were packed away in a vault?

Objected to by defendant's counsel on the ground that it is irrelevant and immaterial, and that the question of the value of the patent is not now at issue.

A. It is; it enables an instantaneous reference, analogous to a man's account in a ledger, instead of following it through day book, cash book, blotter, journal, and all memoranda previously
40 made; it shows at a glance a plan for a true history of each bond and coupon pertaining thereto, past, present, and future, during the life of said bond and coupons.

Q. Whether they have been paid or not?
A. Whether they have been paid or not.

FRANCIS MUNSON.

Subscribed and sworn to before me this 14th day of July, 1875.
I. T. WILLIAMS,
U. S. Examiner.

U. S. Circuit Court, Southern District of New York.

FRANCIS MUNSON
against
THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK.

Deposition of Albert L. Munson, taken the 29th day of July, 1875, before I. T. Williams, Esq., examiner.

Present: R. S. Crane, Esq., counsel for complainant.
" T. B. Clarkson, Esq., do. do. defendant.

ALBERT L. MUNSON sworn on behalf of the complainant in rebuttal, and examined by Mr. CRANE:

Q. 1. What is your name, age, residence, place of business, and business?

A. Albert L. Munson; thirty-three years of age; New York city; business, attorney and solicitor of patents.

Q. 2. How long have you been engaged as an attorney and solicitor of patents?

41 A. Permanently for the past three years and partially for the previous five—eight years in all.

Q. 3. Do you consider yourself an expert in all patent matters?

A. In all matters pertaining to the practice in the Patent Office I am; and all details relating to patents.

Q. 4. Have you ever, since you have been in this business, made yourself conversant with the rights of inventors respecting infringements of patents?

A. I have.

Q. 5. Are you acquainted with the patent in suit of this complainant?

A. I am, thoroughly.

Q. 6. How long have you been acquainted with it, and to what extent are you acquainted with it?

A. I have been acquainted with it for about four months previous to the granting of the patent and ever since that time.

Q. 7. When did you first become acquainted with the patent and the claim made by the patentee upon it?

A. Just before the granting of the patent.

Q. 8. Have you made the subject of this patent a study since that time; and, if so, to what extent?

A. I have made it a study for the past year.

Q. 9. To what extent?

A. I have studied it carefully with regard to the validity and scope of the patent and in regard to its bearing on other plans or other arrangements which might be called similar in form—which might be used for similar purposes.

Q. 10. Have you seen in the comptroller's office, in the city of New York, the plan or system or method there used for filing and preserving bonds and coupons?

A. I have.

Q. 11. When did you first see it?

A. I think it was in July of last year.

42 Q. 12. Are you sufficiently acquainted with the plan there used from having personally and thoroughly examined it to know whether it is an infringement upon the patent of the complainant?

A. I have examined the books in the comptroller's office carefully, and have also examined the Complainant's Exhibit "C," which is one of the books in question, thoroughly and carefully, and my opinion is that it is a complete infringement upon the letters patent in question; that it embodies all the points covered by that patent.

Q. 13. Have you read the testimony of Mr. O'Brien and Mr Warren given by the defendant in these proceedings?

A. I have.

Q. 14. Are you perfectly conversant with that testimony?

Objected to upon the ground that the question calls for the witness' knowledge of papers that are not before him now.

A. I am.

Q. 15. Do you know from their testimony and from the exhibits offered and marked in connection therewith the method which they pretended or alleged they used in reference to preserving coupons?

A. I do.

Q. 16. State whether those plans and methods which, in their testimony and in the exhibits offered in connection therewith, they allege they used were or were not the plan or method claimed by the plaintiff in his letters patent and covered by the patent.

Objected to upon the ground that the question calls for witness' opinion upon a matter which is properly before the court for adjudication, and upon which he has not shown himself competent to testify as an expert.

43 A. The plans shown in Warren's exhibit and described by Warren and O'Brien are in no respect similar or like the complainant's patent plan, excepting that both use a book.

Q. 17. What do the plans or methods so testified to by them comprise?

Objected to upon the ground that it calls for the contents of a book which should be proved by the production of the book itself.

A. The plan shown in Warren's exhibit, which is substantially the plan described by both Warren and O'Brien, is simply the pasting of a batch of coupons due every six months in a scrap-book—that is, the entire batch of coupons due on January first or July first of each year would be pasted into a number of pages according to the number of coupons in each batch. In most cases the coupon from bond No. 1 would be pasted in first, coupon from bond No. 2 in second, following number 1 coupon, coupon from bond No. 3 third, and so on to the end of the batch. When the next six months' set of coupons became due a similar course is pursued, and so on through the whole series of coupons. By this system the coupon for a single bond—take, for instance, bond number one—would be strung through a series or large number of books, according to the quantity or number of bonds and coupons in the issue, and if it was required to make a reference to any particular coupon it would require a search through a large number of books to find it. This plan was principally for the preservation of the coupons in a compact form and was not used or intended to furnish any facilities for the quick reference to any bond or its coupons, or to in anywise furnish a history of the bond or its coupons, or any fact that might happen or occur during the life of the bond from the time it is issued to the time it becomes due.

44 There was no opportunity afforded in this plan for making any memorandum in regard to any coupons that might become destroyed or damaged or lost which became payable in the future.

Defendant's counsel objected to the last two sentences of the answer as not being responsive to the question.

Q. 18. Does the plan testified to by Warren and O'Brien have any reference to the bond itself?

A. It has not. It simply deals with the coupons.

Q. 19. By that plan would the books in which the coupons of a certain issue were to be preserved be all made at once, or would they be made from time to time as the coupons matured?

Objected to as immaterial and irrelevant and as calling for the operation of another person's mind, of which the witness can know nothing whatever, and for the constructions and interpretation of the testimony of another witness.

A. That system, as used for the past twenty years by various corporations, all of which I have carefully examined, calls for but a single book at a time, which is filled up every six months as each six months' batch of coupons comes in.

Q. 20. Have you been an accountant or engaged in any other business?

Objected to as immaterial.

A. I have.

Q. 21. Have you examined the books themselves which Mr. Warren and Mr. O'Brien testify they used for the purpose of preserving coupons?

A. I have examined the books in the office of the Delaware, Lackawana and Western Railroad Company, which Mr. Warren, one of the witnesses, introduced and used there; also the books in use
45 by Mr. O'Brien in his own office; also the books in use by the Second Avenue Railroad Company, which were designed and used by Mr. O'Brien when he was treasurer of that corporation; I have examined them carefully and thoroughly.

Q. 22. From that examination are you able to testify as to whether or not the plan as used by them was similar to or like the plan or method claimed by the patentee and covered by the letters patent?

A. I am.

Q. 23. What is your opinion on that subject?

Objected to upon the ground that the witness has not shown himself competent to give an opinion, and on the further ground that it is a question for the court to decide and not for the witness.

A. From the careful examination I have given those books I find them to agree perfectly with the system described by Mr. Warren and Mr. O'Brien; and it is further my opinion that they in no respect are similar to the patented plan of the complainant and embody no portion of the same in any way, shape, or manner, excepting in both systems a blank book is used. In one it is a simple blank book; in the other a systemized book, in which each page refers to a particular bond and its coupons. I mean by the latter the patented plan of the complainant.

Q. 24. Were those books shown to you by parties having them in their possession at the request of Messrs. Warren and O'Brien?

Objected to as immaterial.

A. I examined the books at the Second Avenue Railroad Company's office by request of Mr. O'Brien, and was by him authorized to use his name for that purpose. The books at the Delaware, Lackawanna and Western railroad's office I examined at the re-
46 quest of Mr. Warren, and also used his name by authorization. I examined them particularly and purposely for the purpose of comparison with the patented system of the plaintiff.

Cross-examination by Mr. CLARKSON on behalf of the defendants:

C. Q. 1. Do you consider yourself an expert in patent matters?

A. My business as a solicitor of patents and a practising attorney before the Patent Office requires and calls for a thorough knowledge of all details relating to patents, and I consider myself an expert in all matters pertaining to patents.

C. Q. 2. Are you familiar with the principles of mechanics?

A. I am; I have been engaged in the designing and construction of complicated machinery since 1867.

C. Q. 3. This patented system of Mr. Munson's—is it an art, machine, manufacture, or composition of matter, or what would you call it?

A. I should recognize it as a structure, not mechanical, probably coming under the head of an art. Similar structures have been made for other purposes and have been patented. I refer particularly to the "hotel register" patented by Hawes, which patent has been the subject of litigation, and has been repeatedly sustained by the courts, and was recognized as a structure proper to be protected by patent. Similar books have been patented in a great number of instances, of which I could give a list.

Defendants' counsel objected to the answer from the words "which has been the subject of litigation" to the end as not being responsive to the question.

C. Q. 4. Would it be possible, in the system described by
47 O'Brien and Warren, to prepare books enough at one time to contain all the coupons of the whole series of bonds?

A. Certainly it would.

(Signed) ALBERT L. MUNSON.

Sworn to before me this 3d day of August, A. D. 1875.

I. T. WILLIAMS, *Examiner.*

Complainant rests.

Adjourned to Monday, August —, 1875.

48 COMPLAINANT'S PATENT, EXHIBIT A. Feb'y 9th, 1875.

THE UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted Francis Munson, dated April 2nd, 1867, No. 63419, for "improvement in filing and recording bonds," etc.

In testimony whereof I, J. M. Thatcher, acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twenty-ninth day of October, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-ninth.

[L. S.] J. M. THATCHER,
Acting Commissioner.

No. 63419.

The United States of America to all to whom these letters patent shall come:

Whereas Francis Munson, of Chicago, Illinois, has alleged that he has invented a new and useful improvement in filing and recording bonds, &c., which he states has not been known or used before such invention; has made oath that he is a citizen of the United States;

that he does verily believe that he is the original and first inventor of said improvement, and that the same hath not, to the best of his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty-five dollars and presented a petition to the Commissioner of Patents praying that a patent may be issued therefor:

49 These are, therefore, to grant, according to law, to the said Francis Munson, his heirs, administrators, or assigns, for the term of seventeen years from the second day of April, one thousand eight hundred and sixty-seven, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the schedule hereunto annexed and made a part of these presents.

In testimony whereof I have caused these letters to be made patent and the seal of the Patent Office to be hereunto annexed.

Given under my hand, at the city of Washington, this second day of April, in the year of our Lord one thousand eight hundred and sixty-seven, and of the Independence of the United States of America the ninety-first.

[L. S.]

W. T. OTTO,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.

T. C. THEAKER,
Commissioner of Patents.

50 UNITED STATES PATENT OFFICE.

FRANCIS MUNSON, of Chicago, Illinois.

Improvement in Filing and Recording Bonds, &c.

Specification forming part of Letters Patent No. 63419, dated April 2, 1867.

To all whom it may concern:

Be it known that I, Francis Munson, of Chicago, in the county of Cook and State of Illinois, have invented certain new and useful improvements in preserving, filing, and canceling bonds, coupons, certificates of stock, &c.; and I do hereby declare that the following is a full, clear, and exact description thereof, reference being had to the accompanying drawings making part of this specification, and to letters of reference marked thereon, like letters indicating like parts wherever they occur.

To enable others skilled in the art to construct and use the invention I will proceed to describe it.

My invention consists in providing a book or other register with pages corresponding in size, style, and number with the bonds, coupons, certificates, &c., to be used, on which pages the said bonds, coupons, or other certificates, when paid, are pasted or otherwise at-

tached, and thus preserved and canceled, as hereinafter more fully explained.

It is well known that large numbers of bonds are issued by town, county, State, railroad, and other corporations, and that stock or certificates of ownership are likewise largely in use in the community, and that frequently, if not generally, such bonds have attached to them coupons, which are detached from time to time and paid separately. As at present managed these coupons and also the bonds, when paid, are either filed away or destroyed, and no evidence remains of their existence nor any history or record of them. It is also well known that these documents are frequently lost or stolen and pay obtained upon them by persons not entitled thereto. If by any means, as is frequently the case, these documents, after having been once rightfully paid, fall into the hands of other parties by theft or otherwise, pay is improperly obtained upon them a second time. By these various means and others the community is constantly being defrauded more or less. To prevent this I have invented a system of preserving, filing, and canceling such documents, which system will not only prevent such fraudulent practices, but also present at all times a full and perfect history or record of all transactions in relation to each and all of said documents. To accomplish this I provide a book or set of books having each page printed or ruled to correspond in size and style with the bond and its coupons or other document, whatever it may be, with a heading showing the number, date when issued, to whom issued, when and where payable, amount, what issued for, rate of interest, and when and where payable, together with such other facts as may be necessary to form a perfect record of the document.

The accompanying drawing illustrates a page of such a book designed for a bond having thirty coupons attached. The pages are numbered consecutively with the numbers corresponding to the numbers on the bonds or other documents.

When any of the coupons are presented and paid they are canceled and then pasted or otherwise secured in their proper place upon the page, each place for them being numbered, as shown in the drawing. When the bond itself is paid it is likewise attached in the place on the page provided for it. If the holder should by any means be dispossessed of one or more of the coupons or bonds upon presentation of the proper evidence he would be paid, but not having the coupon or bond to surrender there would be entered in its place upon the page a record of the facts in the case, as indicated in numbers 4 and 5 of the coupons on the drawing, so that if at any future time said coupon or bond should be presented for payment by a person not entitled to it the record of all the facts relating to it would be ready at hand and could be referred to at once by examining the proper page.

The drawing represents page numbered 57, and would of course be appropriated to bond number 57 and its coupons, if any. By this method of arranging them the number is always an index, so that if it is desired at any time to ascertain any fact in relation to any particular bond or its coupons it is only necessary to turn to the

page having the same number. In case a large series of bonds or certificates are used several books would be required, and in that case the pages of each succeeding book would commence with
51 the number next following that of the last page of the preceding volume, so as to make the numbers of the pages continuous from the beginning of the first book to the ending of the last. It will, of course, be understood that each separate set or series of bonds, certificates of stock, or other similar documents will require a set of books specially prepared for them to correspond with the peculiar character of the document, the system or general plan, however, being the same in all cases, the details only being varied to suit the circumstances of the case.

By this system thus applied the business community will be at once provided with a most convenient and perfect means of preserving, canceling, and filing bonds, coupons, certificates, &c., and with a history or record of all transactions relating thereto, by which much fraud and loss will be prevented.

Having thus described my invention, what I claim, and desire to secure by letters patent, is—

1. The preserving, filing, and verifying of bonds, coupons, certificates, and all similar documents by the means and in the manner substantially as herein set forth.

2. I claim the book or register, constructed and used as and for the purposes set forth.

FRANCIS MUNSON.

Witnesses:
GEO. W. EICHELBERGER.
HENRY STORER.

52 COMPLAINANT'S EXHIBIT "B." Feb'y 9th, 1875.

THE UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the drawing in the matter of the letters patent granted to F. Munson, dated April 2d, 1867, No. 63419, "Bond and coupon register."

In testimony whereof I, Ellis Spear, acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this seventh day of November, in the year of our Lord one thousand eight hundred and seventy-four and of the Independence of the United States the ninety-ninth.

[L. S.] ELLIS SPEAR,
Acting Commissioner.

(Here follows diagram marked p. 53.)

F. Munson.
Filing & Recording Bonds.

No 63,419. Patented Sept. 2, 1867

NO.	DATE.	WHEN ISSUED.	TO WHOM ISSUED.	WHAT ISSUED FOR.	AM'T.	WHEN PAYABLE.	INTEREST.	AT WHAT PLACE PAYABLE.

Nos. 160 & 161.
Munson
vs
Mayer &c. } p. 53.

30.	29.	28.	27.
26.	25.	24.	23.
22.	21.	20.	19.
18.	17.	16.	15.
14.	13.	12.	11.
10.	9.	8.	7.
6.	5.	4.	3.
	2.	1.	

Witnesses.
J. J. Higgins
P. J. Dodge

Inventor.
F. Munson
By H. C. Dodge
Attorney.

54 COMPLAINANT'S EXHIBIT "C." Feb'y 9th, 1875.

This exhibit C is one of the books used in the comptroller's office, N. Y. city, and is entitled on the back "County bonds, consolidated stock, $500, 5431 to 5678; consolidated coupon stock," marked by examiner "Complainant's Exhibit C," and redeposited in comptroller's office by consent.

55 Circuit Court of the United States in and for the Southern District of New York. In Equity.

FRANCIS MUNSON

versus

THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK.

Testimony taken in the above-entitled cause for final hearing, in behalf of the defendants, under and by virtue of the 67th rule of the Supreme Court of the United States, as amended, before Isaiah T. Williams, examiner:

NEW YORK, *May* 21*st*, 1875.

Present: Royal S. Crane, counsel for complainant; T. B. Clarkson, Esq., counsel for defendants.

SAMUEL P. B. HIGGINS, called by the defendant, being duly sworn, testifies as follows:

1 Q. What is your age, residence, and occupation?

A. 46 years of age; occupation, actuary marine insurance; residence, Perth Amboy, New Jersey; business at 50 Wall St., New York city.

56 The witness is shown the drawings and specifications of plaintiff's patent for filing and registering bonds and coupons and is asked:

2 Q. Do you know the method used in the comptroller's office of the city of New York for filing and preserving coupons?

A. Yes, sir.

The witness is shown complainant's Ex. "C" and is asked:

3 Q. Is that the method that is used in the comptroller's office?

A. Yes, sir; it was the method adopted while I was in the comptroller's office.

4 Q. Do you know who proposed this method to the comptroller?

Objected to by the complainant's counsel as immaterial, irrelevant, and has nothing to do in this case who presented or suggested the idea to the comptroller.

5 Q. At the time you proposed this to the comptroller had you any knowledge that the complainant or anybody else had patented

the method of filing and cancelling bonds and coupons mentioned in these specifications and drawings?

Objected to as immaterial and not varying the complainant's rights one way or the other whether he knew it or not.

A. No, sir.

6 Q. Did you ever see any method of filing and preserving coupons similar to this one in use in the comptroller's office?

Objected to on the ground that defendants' counsel seeks to give the contents of a book without the production; second, he has laid no foundation for defendant's knowledge; third, the evidence is incompetent and immaterial; fourth, as not within the pleadings.

57 A. A system similar to this as to coupons and issues of stocks——

7 Q. Did you ever use any such method?

Objected to on the ground that the book which he used must be produced; that defendant's counsel is now seeking through the witness to give the contents of a book from the witness on recollection, and as not coming within the pleadings.

A. No, sir; for this reason, that I have never done any clerical work in my life in relation to this kind of cancelling; I have directed it done.

8 Q. When and where?

A. In the Great Western Insurance Co., in relation to cancelling of scrip; similar cancellation.

9 Q. Where else?

Objected to on the ground that the book is not produced, as incompetent, and not coming within the pleadings.

A. I don't think of any other place just now.

10 Q. Will you please describe in what manner that scrip was cancelled?

Objected to as calling for the contents of a book without the production thereof, and as not coming within the pleadings, and as immaterial and irrelevant.

A. By pasting it over the original stub of the issue.

11 Q. Coupons?

A. The cancellation I am speaking of is the cancelling of scrip by pasting it over the stub of the original issues.

12 Q. Were they in the form of books?

Objected to on the ground that the books must be produced; that the witness cannot give evidence of the contents of a book;
58 that it does not come within the pleadings, and as irrelevant and immaterial.

A. Yes, sir.

13 Q. Are those books in your custody or under your control?

A. Not at all.

13½ Q. Do you know where they are?

A. I don't know.

14 Q. Did you ever see any method similar to the method used in this book, in this or any other country?

Objected to as not specifying when, where, or in what manner, and as attempting to give the contents of a book without producing it, and as not coming within the pleadings.

16 Q. Did you ever see a method similar to this or like this for the cancellation of coupons or bonds in Cuba about the year 1850 or 1852?

Objected to as not coming within the pleadings, as immaterial, and as giving the contents of a book.

A. Yes, sir.

17 Q. Will you please describe, as definitely as you can, what that method was?

Same objection.

A. Almost identical. This is an improvement on that, to a certain extent, in the description at the head of each page that it should be the registry of a bond.

18 Q. Simply an improvement in the description of the bond?

A. Yes, sir.

Cross-examination by Mr. CRANE:

X Q. 19. These books that you have seen were the books of corporations, were they not?

A. Yes, sir.

59 X Q. 20. Now in existence?

A. I suppose so; I can't tell anything about that.

X Q. 21. So far as you know?

A. I suppose they are.

Redirect by Mr. CLARKSON:

R. D. Q. 22. Was the method you saw in Havana the same as that used in the Delaware, Lackawanna and Western road?

A. I could not tell.

S. B. P. HIGGINS.

Read over, subscribed, and sworn to by the witness, Samuel B. P. Higgins, this 21st day of May, 1875.

I. T. WILLIAMS, *Examiner.*

Adjourned to May 24th, 1875.

NEW YORK, *May 24th*, 1875.

Present: Royal S. Crane, for complainant; T. B. Clarkson, for defendant.

WILLIAM E. WARREN, called for defendant, testifies as follows:

Q. 1. Will you please state your name, age, residence, and occupation.

A. William E. Warren; 58 years of age; I am by profession what I call a public auditor and accountant; place of business, 39 Nassau St., in this city; my city residence is 53 West 15th street.

Q. 2. Were you ever in the office of the Delaware, Lackawanna and Western Railroad Co.?

A. I was.

Q. 3. At what time; during what time?

A. I was appointed secretary and treasurer of that company, I think, in the year 1853, and remained in the service of that company until, I think, 1858.

60 Q. 4. While you were in the service of that company was there a system of filing, registering, and preserving paid and cancelled coupons and bonds in use?

Objected to as calling for an opinion and as being without the pleadings, and as immaterial and incompetent.

A. Yes, sir.

Q. 5. By whom was that system devised?

Objected to as immaterial and inadmissible.

A. It was devised by me; I never saw it in use anywhere else, and therefore I say I devised it.

Q. 6. Will you please describe that system.

Objected to as giving the contents of a book without producing the book itself; as not coming within the pleadings, incompetent, immaterial, and no foundation having been laid.

A. The bonds of the Delaware, Lackawanna and Western R. R. Co., which had been issued prior to my engagement with said company in 1853 had coupons attached to them payable every half year, every six months. In order to preserve the coupons as vouchers for the disbursement of just so much money as they represented, and so that they might be readily referred to at any time, I had a book made of large-sized cap paper and caused it to be ruled in spaces to just the size of the coupons, allowing a column between for the insertion of the numbers of the bond from which the coupons were detached. As these coupons were paid after that they were pasted in these blank spaces, opposite the number corresponding to the numbers of the bonds which are inserted in the coupons and from which they were detached. They were then stamped "paid." At any

61 time when I had occasion to ascertain the amount of interest payable or becoming due on a certain day or which had been

paid I counted the coupons pasted in this coupon book. If these amounts equalled the sum which my cash account showed I had disbursed I knew I had vouchers for all the money paid out, and in like manner when I wished to ascertain the amount of coupons for any particular date remaining to be provided for I counted the blank spaces in the coupon book, which gave me that information.

This method of keeping the coupons was found very useful in case coupons were lost. Holders would immediately come to the office to learn if said coupon had been presented and if they had been paid. By referring to the coupon book I was able at a glance to determine whether it had been paid or not. When the entire amount of the coupons was paid and they were pasted in the books there would be no blank spaces left, and the aggregate amount of those coupons would compare with the ledger account of the interest payable on that day, the two agreeing with each other.

Q. 7. At the head of each page what was stated?

A. There was nothing at the head of each page; at the head of each series of coupons was written in the coupon book the corporate title of the company and a description of the bond to which the coupons following belonged and the date when they were payable. That was done at the head of each series or each periodical payment of interest.

Q. 8. In this series of coupons due on the 1st of January, 1852, how many pages of cancelled coupons registered and filed are there?

A. There are 45 coupons on each page. I make it 17 pages, and one page only headed, being the first page.

62 Q. 9. These coupons follow each other in regular numerical order, according to the number of the bond from which they are detached?

A. Yes, sir.

Q. 10. Then you commence another page for another series of bonds, which are headed in like manner and ruled in like manner?

A. The only difference being in the date when the interest was payable.

Q. 11. Was this system applied by you to different kind of bonds?

A. Yes, sir; all the different classes of bonds that were issued by the company.

The above question and answer objected to as giving the contents of a book not produced.

Q. 12. Have you used this system in other offices and for other institutions?

Objected to on the ground that the books must be produced.

A. Yes, sir.

Q. 13. With what companies, please, and when?

Same objection.

A. I think I commenced the use of this method of filing coupons when I was auditor of the N. Y. & Erie Railroad Co., in about the

year 1851 or 1852; I afterwards introduced the same system in the comptroller's office in the city of Brooklyn. Those are the only offices that I remember where I personally introduced this method.

Q. 14. Has it been used under your direction in other offices where it was used before you took hold?

A. It never was used in any of the offices I have mentioned before I introduced it.

Q. 15. Are there any other offices where it was used under your directions?

A. No, sir; not that I know of, not under my direction.

63 Q. 16. Do you know of any other offices where it is used?

Complainant's counsel objects to the witness stating what he saw; he must produce the thing itself; also objected to as immaterial and inadmissible and not within the pleadings.

A. I chanced to be in the comptroller's office in this city, I should think, a year or two ago, and saw in the bureau of the stock and bond clerk a clerk engaged in pasting coupons on city bonds, and on examining the method in use I saw it was very similar, if not precisely the same thing, as the system devised by me many years before.

Q. 17. You used this method in the Erie office and in the Delaware, Lackawanna and Western office in this city?

Objected to as not within the pleadings.

A. Yes, sir.

Q. 18. Please look at these three papers and say if it represents, substantially, your method you have spoken of, of filing and preserving coupons and bonds.

Objected to on the ground that no foundation for the examination is laid.

A. I think it does.

Three papers offered in evidence by defendant's counsel objected to as an improper way of showing the relations between the plaintiff's alleged plan and the witness' alleged plan.

3 papers marked by the stenographer Exhibits A 1, A 2, A 3.

64 Cross-examination by Mr. CRANE:

X Q. 19. When you went into the comptroller's office and saw the books in use did you not notice that each bond and the coupon which belonged to it had allotted to them a separate page?

Objected to on the ground that it calls for the contents of a book without producing the book; as not within the pleadings; that there is nothing in the direct examination to which this, as cross-examination, would apply, and as not proper cross-examination.

A. I cannot remember at this time what, if any, difference there was between the method in use in the comptroller's office and that

devised by me. My present impression is that they were substantially the same thing.

X Q. 20. If in your method you desired to know the history of the coupons of a particular bond, you would have to search through a great number of books, would you not?

A. As many books as there were years in which coupons were payable.

X Q. 21. How many books would that require you to search through, probably?

A. A bond having 20 years to run would require 10 volumes; the volumes are very small.

The above question and answer objected to as hypothetical, and because there is no specific kind or series of bonds referred to.

X Q. 22. According to your plan, was the object anything more than simply pasting and preserving coupons as they were paid?

Objected to on the ground that it does not make any difference what the object was, as long as it accomplished any object.

A. Yes, sir.

65 X Q. 23. What more?

A. I have already stated, in part, it was to facilitate a reference when it became desirable to know what amount of coupons had been paid and what amount remained unpaid, and also to ascertain, in respect to coupons claimed to have been lost by the holders or owners thereof, whether the same had been paid or not.

X Q. 24. If the bond with all the coupons had been stolen, according to your plan, could you at once make use of your books so that the one paying the coupons would have immediate notice of it by the use of the book or the books themselves?

Objected to on the ground that it is immaterial, and that it is not cross-examination, but direct and not on any point upon which the witness was examined on the direct examination.

A. Most decidedly.

X Q. 25. According to your method it would simply show that it had or had not been paid?

A. It would not only show that fact, but it would show, by reference to the stump in the check book, to whom it had been paid.

X Q. 26. I am speaking about these books themselves.

A. These books would show the fact whether the coupons had been paid or not been paid.

X Q. 27. That is all it would show?

A. It would give you the means of ascertaining.

X Q. 28. According to your plan all it would show was whether the coupon had been paid or not?

A. This book of itself would show whether it had been paid or not.

X Q. 29. And that is all?

A. That is all this book would show.

66 X Q. 30. Did you ever use, or did you ever know this book to be used, for any other purpose than simply to show whether the coupons had been paid or had not been paid?

A. Yes, sir; I did. I have often used it so myself.

X Q. 31. I say for any other purpose?

A. Yes, sir; for the purpose of ascertaining to whom the coupons had been paid.

X Q. 32. In the book itself, I mean?

A. I used it first for the purpose of learning whether it had been paid, and then, if it had been paid, I determined by reference to another book to whom it had been paid.

X Q. 33. Did you notice particularly in the books in the comptroller's office whether there was any lettering upon the squares upon which the coupons were to be placed; any letters or figures?

A. My recollection is not distinct; it rather appears to me that the number of the bond from which the particular coupon was detached, instead of being placed in a column separate from that in which the coupon was to be pasted—it seems to me, but I am not certain, that the number was placed in the square, and after the coupon was pasted on was concealed.

The above question and answer objected to as giving the contents of a book, and as immaterial and irrelevant.

X Q. 34. Did you notice whether the tops of the pages of the books in the comptroller's office were all of them marked, or lettered, or numbered, or anything of that kind?

Objected to on the ground that it calls for the contents of a book, as irrelevant and immaterial, and not called out by anything in the direct examination.

67 A. I don't remember.

X Q. 35. Do you remember how many squares there were on each page or how many columns of squares?

A. I have not the least idea of that.

X Q. 36. Was there in your plan any space allotted to or regard had for the bond itself in the books you got up?

A. Yes, sir.

X Q. 37. Where?

A. In the front of each book—a copy of the bond—one of the bonds was placed to show that the coupons in the book were taken from a bond of the tenor exhibited in the front part.

X Q. 38. That was of the first bond of the series, was it not, and not of all the bonds?

Objected to as immaterial.

A. I think there was a bond in each volume of the coupon books.

X Q. 39. In each coupon book there were about how many pages?

Objected to as immaterial.

A. That would depend on the length of time; the number of years. My recollection is that there was prefixed to each volume a specimen of the bond from which the coupons in that volume were detached.

X Q. 40. Were the numbers that are placed in the spaces indicating the number of the bond placed there as the coupons came in and were paid in writing?

A. I think they were inserted before any of the coupons came in written in consecutively.

X Q. 41. But not printed?

A. They were not printed at first. I have an impression
68 that after awhile that I had the numbers printed in, but my recollection is not distinct about it.

X Q. 42. So that all you had was simply a book with squares originally, and afterwards you wrote upon the top of a few of the pages and filled the pages in writing and numbered in writing in appropriate spaces figures representing the numbers of the bonds; is that so?

A. My recollection is that at first during the first few years after I commenced the use of this method of keeping the coupons the numbers were written into the proper spaces, but afterwards, I think, the numbers were printed instead of being written.

X Q. 43. You have no books which you could produce showing such printed numbers, have you?

Objected to as calling for a book and as being immaterial and as not called for by anything on the direct examination.

A. I have no book here. All the books that I used are in the possession of the respective companies. None of them are in my possession.

X Q. 44. Will you swear positively that the numbers representing the numbers of the bonds to which the coupon belonged were in any instance printed?

A. I can't state any more positively than I have already done.

X Q. 45. Then it is simply a strong impression?

A. That is it; that is the truth.

X Q. 46. Then I understand you that your plan was simply to have a book squared off by a stationer without anything else in it; is that so? I mean until the book came to be used for the purpose of preserving and cancelling coupons?

Objected to as incompetent and as calling for the contents of a book and not called for by anything in the direct examination.

69 A. That is so in respect to the ruling, but I think that all the books were lettered on the backs showing the particular kind of coupons paid and the year and months when the coupons to be pasted in the books were payable, with the initials of the corporate title of the company.

X Q. 47. And until the coupons were paid there was nothing whatever except the squares in the book, was there?

A. Yes, sir; the numbers were always entered in the spaces allotted to them before the coupons were paid. The books were prepared for use, and as fast as coupons were paid they were pasted in the book as fast as they could be conveniently.

Redirect examination by Mr. CLARKSON:

R. D. Q. 48. The squares were numbered before the book was used at all.

A. Yes, sir; I think that was always the case.

R. D. Q. 49. If a bondholder came to you and said that a bond and coupons attached were lost, could not you mark in the spaces where their coupons were to be?

A. Yes, sir; that was often done; the name and address of the holder of the bond pencilled in the space.

R. D. Q. 50. Could not this be done with the whole series of coupons? Suppose he told you that bond No. 5 of such and such a series was lost, could you not go through the book and mark them?

A. Yes, sir; that was often done in case where a bond had been mislaid for more than 6 months or more than one interest payment was in arrears; the book was marked in that way, giving, right in the place where the coupon would be pasted in the page, the name and address of the holder.

70 Recross-examination by Mr. CRANE:

R. X Q. 51. Do you think that your plan is an improvement on the plan you saw in the comptroller's office?

Objected to on the ground that there is no foundation laid for the evidence and as calling for the comparison of two books, one of which is not present.

A. I certainly prefer my plan on this account: It does not conceal the number of the bond after the coupon is pasted in. For that reason I prefer my plan.

W. E. WARREN.

Subscribed and sworn to by the witness this 2d day of June, 1875, before me, the witness having first read over the same.

I. T. WILLIAMS, *Examiner.*

Adjourned to Tuesday, May 25th, at 3 p. m.

NEW YORK, TUESDAY, *May 25th.*

Adjourned to May 27th at 2 p. m.

71 DEFENDANT'S EXHIBIT A 1. May 24, 1875.

NAME OF COMPANY.

Description of Coupons, viz., from what Series of Bonds Detached and when due.

1	Coupon No. 1. Bond No. 1.	13	Coupon No. 1. Bond No. 13.	25	Coupon No. 1. Bond No. 25.
2	Coupon No. 1. Bond No. 2.	14	Coupon No. 1. Bond No. 14.	26	Coupon No. 1. Bond No. 26.
3	Coupon No. 1. Bond No. 3.	15		27	
4	Coupon No. 1. Bond No. 4.	16		28	
5		17		29	
6		18		30	
7		19		31	
8		20		32	
9		21		33	
10		22		34	
11		23		35	
12		24		36	

72 DEFENDANT'S EXHIBIT A 2. May 24, 1875.

1	Coupon No. 2. Bond No. 1.	13	Coupon No. 2. Bond No. 13.	25	Coupon No. 2. Bond No. 25.
2	Coupon No. 2. Bond No. 2.	14	Coupon No. 2. Bond No. 14.	26	Coupon No. 2. Bond No. 26.
3	Coupon No. 2. Bond No. 3.	15		27	
4	Coupon No. 2. Bond No. 4.	16		28	
5		17		29	
6		18		30	
7		19		31	
8		20		32	
9		21		33	
10		22		34	
11		23		35	
12		24		36	

73 DEFENDANT'S EXHIBIT A 3. May 24, 1874.

1	Coupon No. 3. Bond No. 1.	13	Coupon No. 3. Bond No. 13.	25	Coupon No. 3. Bond No. 25.
2	Coupon No. 3. Bond No. 2.	14	Coupon No. 3. Bond No. 14.	26	Coupon No. 3. Bond No. 26.
3	Coupon No. 3. Bond No. 3.	15		27	
4	Coupon No. 3. Bond No. 4.	16		28	
5		17		29	
6		18		30	
7		19		31	
8		20		32	
9		21		33	
10		22		34	
11		23		35	
12		24		36	

74 MAY 27TH, 1875.

Present: Royal S. Crane, for complainant; T. B. Clarkson, for defendant.

JOHN O'BRIEN, being sworn as a witness on behalf of the defendant, says:

Q. 1. Please state your name, age, residence, place of business, and occupation.

A. John O'Brien; 50 years old; 19 Madison Square, north; 58 Wall St.; banker and broker.

Q. 2. How long have you been a banker and broker?

A. 30 years and over.

Q. 3. Were you ever secretary or treasurer of any incorporated company which issued stocks or bonds with coupons attached?

A. I was treasurer of the 2d Ave. railroad from 1856 to 1866, and during that time the company issued coupon bonds.

Q. 4. Did you, while such treasurer, use any method for preserving and filing paid coupons on such bonds by means of pasting them to a paper or leaves of a book?

Objected to as immaterial and incompetent and not within the pleadings, and as giving the witness testimony of the contents of a book without the production of the book itself.

A. I have used a book for that purpose.

Q. 5. Will you please describe the method by which it was done?

Objected to on the ground that the book itself is the best evidence, and that the witness' interpretation of a plan is best illustrated by the plan itself which he used; that no foundation has been laid, and that the evidence in this shape is clearly immaterial and incompetent.

75 A. I here produce a book which I have now in use similar to the one I have used since 1857 or 1858.

Complainant's counsel moves to strike out the latter part of the answer as being irresponsive and giving his interpretation of the contents of a book, it being sought to introduce evidence of the contents of another book also without its production, the best evidence being the book itself.

A. The plan was to rule a book off in spaces the size of the coupons and, when the coupons were paid and cancelled, pasted in those spaces. The spaces were numbered to correspond with the bond number from which they were detached.

Q. 6. In what order were the spaces?

Objected to as giving the contents of a book, and also the same objection as the one to the last question.

A. The coupons were pasted in irregular rotation, spaces being left for those not presented.

Q. 7. How were the coupons aggregated together—that is, in what order were they placed in regard to the time of payment?

Same objection.

A. When the coupons came due and paid they were pasted in the book as fast as they were paid, in the spaces arranged for them, according to the number of the coupons. If any coupon was missing a space was left for it in which it was to be pasted when it came in and was paid.

Q. 8. Were spaces ruled for all the coupons for the first year's interest?

Same objection.

A. As fast as they were presented for payment spaces were ruled for them.

76 Q. 9. For the first year?

A. For every year as they came in, or for every six months as they come in.

Q. 10. And each series of coupons is kept separate?

A. Of course, each semi-annual coupon was pasted in regular order, one semi-annual following the other.

Q. 11. Were the books you used in 1858 the same principle as you have just described?.

Objected to as giving contents of a book without producing it.

A. They were.

Q. 12. Was the method you used in 1858 for filing and preserving coupons the same as that you have just described?

Same objection.

A. The same precisely.

Q. 13. Where did you use them?

A. In the office of the Second Avenue Railroad Company, New York city.

Defendant's counsel offers in evidence certified copy certificate of deposit of title of plaintiff's patent.

Objected to as immaterial and irrelevant.

Marked by the stenographer "Defendant's Ex. B" of this date.

Cross-examination by Mr. CRANE:

X Q. 14. In the books you used as you have described, how were these spaces made?

A. By pencil marks or may have been in ink; they were not printed; they were ruled by hand.

X Q. 15. Was there any printing on the pages or writing, except the ruling and numbering?

A. Each series of coupons was designated by printing at the head by hand.

77 X Q. 16. On one page or how many?

A. It depends on how many coupons there were.

X Q. 17. There was not a heading to each page?

A. As a general thing, the books were ruled as the coupons came in.

X Q. 18. What I refer to is the heading on the page. The pages were not, each of them, headed?

A. As fast as the coupons came in, and answered the purpose at the time.

X Q. 19. Each page was headed?

A. There was no necessity of heading each page.

X Q. 20. To the best of your recollection, about how many of the pages—what proportion were headed?

A. That I could not tell you, because I don't know how many coupons were paid.

X Q. 21. Was there any provision made in those books for the filing away and cancelling of the bond itself?

A. No, sir.

X Q. 22. Was not the object of your using this system simply to keep the coupons in a proper place after payment and cancellation?

Objected to as immaterial, the intention of making the book not being material.

A. The object was to keep the paid coupons in such a shape that when the trustee was to give satisfaction piece he would find all the cancelled coupons directly under his hand.

X Q. 23. Then it was simply for preservation?

A. For convenient preservation.

X Q. 24. Of the coupons?

A. Yes, sir.

X Q. 25. What was done with the bonds?

Objected to as immaterial.

A. The bonds are not due yet.

78 X Q. 26. None of the bonds?

A. No, sir. They became due and were extended, and the bonds have never been paid.

X Q. 27. The bonds have matured, have they not, and been substituted by others?

A. No, sir; they matured, were extended, and new sheets of coupons added to them.

X Q. 28. What was done with the matured bonds?

A. The holders have them still.

X Q. 29. In any of the books or registers which you have used for that purpose was there any provision made for the reception of the bond itself?

A. There has never been any reservation made in any books which I used, because there was never any occasion.

X Q. 30. You did not in your plan make a page to represent a bond?

A. No, sir; the pages only represent the coupons.

X Q. 31. And the numbering on the squares was simply to represent the number of the bond?

A. Of the coupon that was to be pasted there. The coupon corresponds with the number of the bond.

X Q. 32. The number which you put in pencil or ink in the squares was the number of what, the number of the bond or the coupons?

A. The number of the coupon, which number corresponded with the number of the bond from which it was cut.

X Q. 33. Then it was the number of the bond?

A. And the coupon also. The coupon number corresponded with the number of the bond. The number which was placed in the space was the number of the bond and the coupon also.

X Q. 34. Then I understand you that these books were until you you squared and numbered them simply blank books, were they not?

A. Precisely.

X Q. 35. The paper was brown paper?

79 A. We would not use good paper for that.

X Q. 36. In the plan which you have testified to did each page represent a bond and its coupons?

A. No, sir; I had no page for the bonds, for I never filed any bonds.

X Q. 37. Each page did not represent all the coupons of any particular bond?

A. The books represent the coupons of that issue of bonds.

X Q. 38. Did each page represent all of the spaces for the coupons of one bond alone?

A. The pages which I used would not hold all the coupons.

X Q. 39. Then answer the question, yes or no.

A. The book which I used did not represent upon each page all the coupons of any particular bond. The page would not hold them. The pages were ruled to a sufficient extent to have pasted in the coupons that were due each six months.

X Q. 40. Witness is shown Plaintiff's Exhibits A and B and he is asked if his plan corresponds with the plan now shown him.

A. My book had no space for the bond. It only had spaces for the coupons as they became due and were paid.

X Q. 41. Was your plan like that?

A. It was not. The principle was the same, but not the plan.

Adjourned to Monday, May 31st.

The witness, having read over the foregoing testimony, wishes to explain his answer to the last question by saying that the word plan in his said answer was intended by him to mean system or method and not a map or drawing, there being no map on the book or books he used.

(Signed) JNO. O'BRIEN.

80 Read over and subscribed by the witness this 3d day of June, A. D. 1875, before me—

(Signed) I. T. WILLIAMS, *Examiner.*

Defendant rests.

Adjourned without date, subject to two days' notice from complainant's counsel.

DEFENDANT'S EXHIBIT B. May 27, 1875.

No. 170.

UNITED STATES OF AMERICA, *Northern District of Illinois* } *To wit:*

Clerk's office of the district court of the United States for said district.

Be it remembered that on the 19th day of October, anno Domini 1858, Francis Munson, of said district, has deposited in this office the title of a work as follows, to wit: "Munson's Patent Bond Cancelling File," the right whereof he claims as in conformity with an act of Congress entitled "An act to amend the several acts respecting copyrights."

WM. H. BRADLEY, *Clerk.*

Work deposited this — day of ——, 18—.

I, A. R. Spofford, Librarian of Congress, hereby certify that the within is a true copy of the original record of copyright in the Library of Congress.

In witness whereof I have hereunto set my hand and affixed the seal of my office this 25th day of May, 1875.

[Copyright Seal.]

A. R. SPOFFORD,
Librarian of Congress.

81 Deposition of William B. Carroll, taken on behalf of the defendants, after the complainant had closed his testimony in rebuttal, on the 2d day of August, 1875, before I. T. Williams, Esq., examiner.

Present: Royal S. Crane, Esq., counsel for complainant; T. B. Clarkson, of counsel for defendant.

WILLIAM B. CARROLL, sworn on behalf of the defendants and examined by Mr. CLARKSON:

Q. 1. What is your business?

A. Clerk in the comptroller's office.

Q. 2. How long have you been there?

A. I have been in the comptroller's office since March, 1873.

Q. 3. You are the same William B. Carroll that has been heretofore examined as a witness on behalf of the complainant in this case?

A. I am.

Q. 4. What is your special business in the comptroller's office?

A. I have got charge of the coupons there. After they are paid by the city chamberlain they are turned over to me, and then I have the entering of them in books, and then I either superintend or do it personally. I paste them in a book for preservation.

Q. 5. How many books for the pasting in and preservation of the bonds and coupons are there in the comptroller's office?

A. 119.

Q. 6. What are the names of the different kinds of bonds for which those are intended?

A. City parks improvement fund stock, dock bonds, city bonds, county bonds, city improvement stock, consolidated stock, and tax-relief bonds.

82 Q. 7. Of the city parks improvement fund stock how many books for coupons are there?

A. Well, there are two kinds of bonds—$500 there are three books and $1,000 there are two books.

Q. 8. For the coupons of how many bonds are those three books intended?

A. Numbers 1 to 862, inclusive, the $500 bonds; then the $1,000 bonds run from No. 1 to 431.

Q. 9. How many coupons are there to those bonds?

A. Sixty to each bond.

Q. 10. How many kind of dock bonds are there?

A. Two—$500 bonds and $1,000 bonds.

Q. 11. For the $500 bonds how many books are there?

A. Four.

Q. 12. And how many bonds?

A. A thousand.

Q. 13. Of the thousand-dollar dock bonds?

A. Two books and 500 bonds.

Q. 14. And how many coupons to each bond?

A. Sixty.

Q. 15. Of the city bonds how many books are there?

A. There's two kinds—five hundred dollars and a thousand. There are 4,253 $500 bonds.

Q. 16. First, how many books?

A. 17 books for $500 bonds and 8 books for $1,000 bonds.

Q. 17. For the coupons of how many bonds are the 17 books intended?

A. 4,284.

Q. 18. For the coupons of how many $1,000 bonds are the eight books intended?

A. 2,128.

Q. 19. And how many coupons are there to each of those bonds?

A. Sixty.

83 Q. 20. Now, of the county bonds, how many kinds are there?

A. Two, $500 and $1,000.

Q. 21. How many books are there for the coupons of the $500 bonds?

A. 36.

Q. 22. How many books for the coupons of the thousand-dollar bonds?

A. 18.

Q. 23. For the coupons of how many bonds are those 36 books intended?

A. 8,887 bonds.

Q. 24. And the 18 books of $1,000 bonds, for the coupons of how many bonds are they intended?

A. 4,445.

Q. 25. And how many coupons are there to each of those county bonds?

A. 60.

Q. 26. Now, of the city improvement stock, how many bonds are there?

A. 820 $1,000 bonds.

Q. 27. In how many books?

A. Three books.

Q. 28. And how many coupons are there to each of these bonds?

A. 44.

Q. 29. And of the consolidated stock, how many kinds of bonds are there?

A. Two, $1,000 and $500.

Q. 30. For the $1,000 bonds how many books are there?

A. Four.

Q. 31. And for the coupons of how many bonds are those four books intended?

A. 1,064.

Q. 32. Of the $500 bonds consolidated stock, how many books are there for coupons?

A. Four.

84 Q. 33. And for the coupons of how many bonds of that kind of stock are those four books intended?

A. 1,000.

Q. 34. And how many coupons are there on each of the city improvement bonds and consolidated stock?

A. 44 coupons.

Q. 35. How many kinds of tax-relief bonds are there?

A. Two, $500 and $1,000.

Q. 36. Of the $500 bonds how many books are there?

A. 12.

Q. 37. Intended for how many bonds?

A. For bonds Nos. 1501 to 4500, inclusive.

Q. 38. That will be the coupons of 3,000 bonds?

A. Whatever that amounts to; yes.

Q. 39. How many books are there for the coupons of the $1,000 bonds tax relief?

A. Six.

Q. 40. Intended for the coupons of how many bonds?

A. 1,500.

Q. 41. How many coupons are there to each of those tax-relief bonds?

A. Forty.

Adjourned to August 3d, 1875, at 1 p. m.

NEW YORK, *August 3d*, 1875.

Present: Counsel for both parties.

WILLIAM B. CARROLL.

Direct examination continued by Mr. CLARKSON:

Q. 42. Look at Exhibit C, heretofore shown you. Of the 119 books in the comptroller's office intended for the reception, pasting, and preservation of coupons how many are ruled and numbered in the shape, style, and order that is that book?

A. There are ninety books.

85 Defendants produce book marked "City Bonds, Tax-Relief Bonds No. 2, $500, 1501 to 1750, Currency Coupon Bonds." Marked Def'ts' Exhibit No. 1, of August 3, 1875.

Q. 43. How many books are there in the comptroller's office intended for the reception, pasting, and preservation of coupons, which books are ruled and numbered in the shape, style, and order that is that book?

A. Eighteen books.

Defendants produce in evidence book marked "City Bonds, City Improvement Stock, $1,000, 267 to 532, Gold Coupon Stock." Marked Defendants' Exhibit No. 2, of to-day.

Q. 44. How many books are there in the comptroller's office intended for the reception, pasting, and preservation of coupons, which books are ruled and numbered in the shape, style, and order that that book is?

A. Eleven.

Defendants introduce in evidence bond No. 5550, consolidated stock county of New York, of the denomination of $500, with coupons attached, marked on its face "Cancelled," and the coupons cancelled by being punched; which bond and coupons are pasted in Complainant's Exhibit "C."

Also bond No. 300, consolidated stock of the city of New York, city improvement stock, for $1,000, and the coupons thereof, the coupons being pasted on fol. 10, 300, of book marked Exhibit No. 2, of to-day, and the bond on the blank page opposite; which bond and coupons are together marked Exhibit No. 4, of to-day.

86 Also an unissued bond for $500 of the issue of tax-relief bonds of the city of New York No. 2, with the coupons thereto attached pasted on the fly leaf of Defendants' Exhibit No. 1, of to-day. Marked Def'ts' Ex. No. 5, of to-day.

Also bond No. 505 of the issue of dock bonds of the city of New York for $500, marked on its face, "Cancelled by registered bond July 16, 1873," with the coupons now thereunto attached; which is pasted in the book of dock bonds of $500 denomination, numbered 501 to 752. Marked Def'ts' Ex. No. 6, of to-day.

Also bond No. 300, consolidated stock of the city of New York, for $1,000, issued by authority of an act of the Legislature of the State

of New York, being chapter 444 of the Laws of 1872, pasted opposite page 300 in book indorsed, "Consolidated Stock, City of New York, $1,000, 274 to 546," and the coupons to which bond are pasted on said page 300. Marked Ex. No. 7, of to-day.

Also bond No. 4064, consolidated stock of the city of New York for $500, marked on its face, "Cancelled by registered bond No. 1, for $500, September 26, 1873," with the coupons thereto attached. Marked Def'ts' Ex. No. 8, of to-day.

Also bond No. 200, city parks improvement fund stock, for $500, marked on its face, "Cancelled by being included in registered bond for $500, September 26, 1873," and the coupons thereto attached. Marked Def'ts' Ex. No. 9, of to-day.

87 Q. 45. Are you familiar with the style, size, shape, and arrangement of the bonds and coupons of the various issues, specimens of which have just been introduced in evidence, at the time such bond and coupons were issued?

A. I am.

Q. 46. Were the bonds of the several issues of which you have heretofore testified like those respectively marked in evidence in regard to the number of coupons, size, style, shape, and arrangement with regard to each other and to the bond?

A. They were.

WILLIAM B. CARROLL.

Read over, subscribed, and sworn to by the witness, William B. Carroll, this 10th day of August, 1875, before me—

I. T. WILLIAMS, *Examiner.*

88 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Wednesday, the nineteenth day of November, in the year of our Lord one thousand eight hundred and seventy-nine.

Present: The Honorable Hoyt H. Wheeler, judge.

FRANCIS MUNSON
vs.
THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK. } In Equity.

The above-entitled cause coming on this day for final hearing upon pleadings and proofs, Mr. Royal S. Crane is heard in behalf of complainant; Mr. Frederic H. Betts is heard in behalf of defendant.

Curia advisari vult.

89 United States Circuit Court, Southern District of New York.
In Equity.

FRANCIS MUNSON

vs.

THE MAYOR, &C., OF THE CITY OF NEW YORK.

WHEELER, *J.:*

This suit is upon a patent to the plaintiff numbered 63419 and dated April 2, 1867, for a bond and coupon register.

The defendant sets up and insists that this register is not a subject for a patent within the law; that the invention was tendered to and used by William E. Warren and John O'Brien before the plaintiff's invention, and that it is not liable for the infringement shown.

The principal argument upon the first point rests upon the claim that the register should have been copyrighted instead of being patented, and Drury *v.* Ewing, 1 Bond, 540, is much relied
90 upon to support that proposition. A copyright is a right to copy merely as the word imports, and covers only the multiplication of copies. Perris *v.* Hexamer, 99 U. S., 674; Baker *v.* Selden, S. C. U. S., Oct. 7, 1879; Alb. Law J., Feb. 28, 1880, p. 168.

The plaintiff's invention is of a book with a page or pages spaced for each bond and its coupons of any series of coupon bonds and with the spaces numbered and designated to show what bonds and coupons they are for while any of them are outstanding and for receiving them for safe-keeping as vouchers or memoranda when any of them are taken up or paid. The plan is the same for registers for different bonds of a series and for different series of bonds, but the registers are not copies of one another, and the right to multiply copies would afford no protection at all.

In Drury *v.* Ewing there might be multiplication of copies of the charts.

That case is distinguished and commented on in Baker *v.* Selden. Here the principle of the invention is embodied in each reg-
91 ister as the principle of a machine is embodied in each machine. There is no difference because the contrivance is in the form of a book, although books are commonly copyrighted. Hawes *v.* Washburn, 5 O. G., 491.

The evidence shows that Warren and O'Brien made use of similar arrangements for the same purpose before the plaintiff invented his, but not that either of them is the same as his. Neither of them had any spaces for the bonds themselves. Warren had spaces on the same page for each coupon of the same number throughout the whole series of bonds, necessitating looking through as many pages as there were coupons to find all the coupons of any bonds; the plaintiff has all the coupons of each bond and the bond together. Warren had as many pages as coupons; the plaintiff as many as bonds. It is not quite clear from the evidence what O'Brien's exact plan was. He

says, "The pages were ruled to a sufficient extent to have pasted in the coupons that were due each six months." This would be more like Warren's plan than the plaintiff's. The proof is abund-
92 ant that the invention is useful, and that the defendant's officers make use of it for the bonds of the city. That the city is liable, in its corporative capacity, for such an infringement has been considered and decided in Allen *v.* The Mayor, etc., in this district.

Let there be a decree for injunction and an account, according to the prayer of the bill, with costs.

HOYT H. WHEELER.

(Endorsed:) U. S. circuit court. Filed June 15, 1880. John I. Davenport, clerk.

93 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Tuesday, the 15th day of June, in the year of our Lord one thousand eight hundred and eighty.

Present: The Hon. Hoyt H. Wheeler, judge.

FRANCIS MUNSON
ag'st
THE MAYOR, ALDERMEN, AND COMMONALTY OF THE City of New York, and Andrew H. Green as the Comptroller thereof. } In Equity.

This cause came on to be heard at the October term, 1879, upon the pleadings and proofs and was argued by counsel for the
94 respective parties, and now, upon consideration thereof, it is ordered, adjudged, and decreed that the letters patent of the United States numbered 63419, granted April 2, 1867, to the above complainant for a new and useful improvement in filing and preserving bonds and coupons in registers or books (the same being the letters patent on which the above-entitled suit is brought), are good and valid in law.

That the said defendants, The Mayor, Aldermen, and Commonalty of the City of New York and the Comptroller thereof, have infringed the first and second claims of said letters patent and upon the exclusive rights of the complainant under the same; that the complainant recover of the said defendants the gains, profits, and advantages which they have received or made or which have accrued to them from said infringement by the manufacture or use of the improvements described in and secured by the first and second claims of said letters patent since the first day of January,
95 1872, and also the damages which the complainant has sustained thereby.

That it be referred to Stephen D. Law, Esq., as master *pro hac vice*, to ascertain and take and report to the court an account of the gains, profits, and advantages which have arisen or accrued to the said The Mayor, Aldermen, and Commonalty of the City of New

York, or to the said Andrew H. Green, as comptroller thereof, from the manufacture or use of said improvements, and to ascertain and report the damages which the complainant has sustained thereby.

That the complainant, on such accounting, have the right to cause an examination of said defendant, The Mayor, Aldermen, and Commonalty of the City of New York, its officers and servants, *ore tenus* or otherwise, and also the books, vouchers, and documents of said defendant, as said master may appoint.

That a perpetual injunction be issued herein against the said The Mayor, Aldermen, and Commonalty of the City of New York
96 and the said Andrew H. Green, as comptroller thereof, restraining the said corporation and the said comptroller and their and each of their officers, attorneys, agents, servants, and employees, from directly or indirectly making or using or in any way counterfeiting or imitating the invention and improvement described in and secured by the said first and second claims of the said letters patent granted to the complainant herein as aforesaid otherwise than by continuing the use of registers in which bonds or coupons have now been placed for the purpose of keeping therein and referring to said bonds and coupons only.

That the complainant recover of the said defendants his costs and disbursements herein, to be taxed.

(Signed) HOYT H. WHEELER.

(Endorsed:) U. S. circuit court, southern dist. of New York. Francis Munson ag'st The Mayor, Aldermen, and Common-
97 alty of the City of New York. Decree. Royal S. Crane. compl't's solicitor, Staats Zeitung building, Tryon Row, N. Y. city. U. S. circuit court. Filed Aug. 26, 1880. John I. Davenport, clerk.

98 U. States Circuit Court, South. Dist. New York.

FRANCIS MUNSON
vs.
THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK.

Proceedings before S. D. Law, master *pro hac vice*, in above suit, under and in pursuance of the order of reference made in said suit on the 15th day of June, 1880.

NEW YORK, *December* 1, 1880.

Issued summons at request of Royal S. Crane, Esq., solicitor for complainant, returnable December 8, 1880, at 2½ p. m.

NEW YORK, *December* 8, 1880.

Adjourned to December 16, 1880.

NEW YORK, *December* 16, 1880.

Adjourned to further notice.

NEW YORK, *March* 29, 1881.

Issued summons at request of complainant's counsel, for hearing for April 6, 1881, at 2. p. m.

99 NEW YORK, *April* 6, 1881.

Present: R. S. Crane, for comp't; F. H. Betts, for def'ts.

Complainant's counsel produces before the master notice of hearing for this day, April 6th, with admission of service by Wm. C. Whitney, corporation counsel, and the same is marked "Complainant's Exhibit Notice," S. D. Law, master *pro hac vice.*

Also issued summons for production of books, papers, &c., as to the registers and books for filing, preserving, and recording bonds, coupons, and made or used by defendants, returnable on April 20th, 2 p. m.

Adjourned to April 20th, 2 p. m.

NEW YORK, *April* 20, 1881.

Present: R. S. Crane, Esq., for comp't.

Mr. Hunt, clerk of defendants' counsel, who represents that Mr. Betts is actually engaged in the supreme court in Kings county trying a cause there pending.

The defendants did not appear in obedience to the summons issued on the sixth inst.

Adjourned to Thursday, April 28th, 2 p. m.

NEW YORK *April* 28, 1881.

Present: Mr. Crane, for comp't; Mr. Hyde, for def'ts.

Complainant filed with the master the original summons of the master, issued by him on the 6th day of April inst., with
100 proof of service of same upon Allan Campbell, the comptroller of the city and county of New York, on the 7th day of April, and the same is marked "Complainant's Exhibit Summons," S. D. Law, spec. master.

Adjourned to May 3, 1881, at 3 p. m.

NEW YORK, *May* 3, 1881.

Present: R. S. Crane, Esq., for comp't; F. H. Betts, Esq., for def'ts.

Defendant produces, under the summons of the master, issued on the 6th day of April, three books from the finance department of the city of New York, which are endorsed as follows:

County bonds.	City bonds.	City bonds.
Consolidated stock, $500.	Consolidated stock—city, $500.	Tax-relief bonds, No. 2, $1,000.
3699 to 3946.	501 to 750.	1 to 250.
Consolidated coupon stock.	Gold coupon stock.	Currency coupon bonds.

101 WILLIAM B. CARROLL, a witness produced, being duly sworn, deposes and says:

I am a clerk in the finance department of the defendants, and have been so for the last eight or nine years. I have now produced three books from the said department, which are books formerly used by the finance department for the preservation of canceled coupons and coupon bonds.

Q. 1. Have you with you a statement of the number of books that have been used in the finance department of the defendants substantially like those now produced and of the number of bonds and coupons now contained in each of said books?

A. I have not.

Q. 2. Please give the details of the statement you have made and produce.

A. I have a statement of the books formerly used in the comptroller's office for the preservation of canceled bonds and coupons, stating the different kinds of bonds, the different amounts of such bonds, the different amounts of such coupons, the number of spaces on each page for coupons, the number of books required for each different kind of bonds, and the maximum number of coupons which have been pasted on each page of each book; also a separate maximum statement of the number of canceled bonds pasted in the books up to June 1, 1880. These statements are, to the best of my knowledge and belief, correct.

The statements produced by the witness are put in evidence by complainant's counsel and are marked "Statement No. 1," S. D. Law, spec. master, and "Statement No. 2," S. D. Law, spec. master.

102 These book were commenced to be used in 1872—some of them; others were commenced to be used in 1875, and they all ceased to be used in June, 1880. No bonds or coupons have been placed in any of such books since June 15, 1880, the date of the service or filing of the opinion of the court in this suit. The total number of all the books which have been so used by that department is 119. The whole number of bonds which have been placed or put in those books is about 4,904. There have been no other books used for such purpose other than those I have mentioned.

Cross-examined by Mr. BETTS:

These bonds, when pasted on the blank page, are pasted on the page opposite that numbered with the number of the bond. The page is not ruled in any way for the reception of the bond, nor is the page of the same size with the bond. There are no books or papers kept showing the number of books used for the preservation of canceled bonds and coupons.

Cross-Q. 3. Since those books have been discontinued what method has been practiced for preserving bonds and coupons in the finance department?

(Objected to as immaterial and beyond the scope of the reference to the master and as outside of the record; question admitted by master; exception taken by complainant's counsel.

A. By filing the coupons and bonds away in boxes after they are numerically arranged and sorted.

Adjourned to May 19, 1881, at 2 p. m.

103 NEW YORK, *May* 19, 1881.

Present: R. S. Crane, Esq., for complainant; F. H. Betts, Esq., for defendants.

Adjourned to May 23, 1881, at 10 a. m.

NEW YORK, *May* 23, 1881.

Present: R. S. Crane, Esq., for complainant; F. H. Betts, Esq., for defendants.

Complainant's counsel, upon the notice and affidavit produced before and filed with the master, and which is marked "Complainant's Exhibit Notice and Affidavit," S. D. Law, spec. master, and a copy of which has been served upon defendants' counsel—

Moves for an order for the examination, in Chicago, of the following persons, Francis Munson, the complainant; Amos T. Hall, Charles S. Bartlett, and William E. Gilman (being the persons mentioned in said affidavit), as witnesses on the part of the complainant.

Defendants' counsel objects to any order being made for the examination of said witnesses or either of them for the following reasons:

1. As to the witness Francis Munson, because he is the complainant, and it is the duty of the complainant to appear in person before the master and give such testimony as he is competent to give, and no reason is shown for not producing him orally before the master.

2. As to all the witnesses, because the statement in the affidavit, on motion for an order for their examination, substantially
104 states that they are to be examined as experts, and it is not competent to prove by experts in Chicago the value, benefits, or profits to them or either of them of the use of the complainant's alleged plan, the reference to the master being to determine the profits derived by the defendants and not those derived by the proposed witnesses.

3. No sufficient reason is shown for examining witnesses in Chicago as experts rather than orally before the master.

Complainant's counsel, in answer to above objections on part of defendants, says:

As he reads the statute it is entirely competent for the master to issue an order for the examination of any witnesses whatever when such witnesses reside more than one hundred miles from the master's office. It is immaterial whether they are experts or are to be examined as to matters in which expert testimony is not required. The statute makes no distinction between experts and other witnesses, and the testimony of witnesses in Chicago, as to the advantages of

the use of complainant's patented plan, is as available as though they had used the plan in New York instead of in Chicago. If there is any difference in the two places as regards profits that difference can be easily arrived at by testimony to be given by defendants.

Objections of defendants' counsel overruled by the master; and

Ordered by the master, That the testimony of the said witnesses, Francis Munson, Amos T. Hall, Charles S. Bartlett, and Wil-
105 liam E. Gilman, be taken in this cause on behalf of the complainant by deposition according to the acts of Congress, on notice to the defendants' solicitor, as prescribed by said acts, of the time and place of the examination of said witnesses; that any objections taken by either party to said testimony be entered upon the record with such testimony, and that the testimony of said witnesses, when so taken, be sealed up, as prescribed by said acts, and be directed to Joseph M. Deuel, Esq., the clerk of this court, at New York city, and that the depositions of such witnesses be taken and transmitted to said clerk within thirty days from the date of this order.

Adjourned to June 27, 1881, at 2 p. m.

NEW YORK, *September* 9, 1881.

Present: Mr. Crane, for complainant; Mr. Hyde, for defendants.

Depositions of Francis Munson and Amos T. Hall, taken at Chicago on the 7th and 8th days of July, under the order made in this cause on the 23d day of May, 1881, produced before the master, and put in evidence by the complainant.

It is admitted by the defendants' solicitor that the above-named witnesses are now more than one hundred miles from the place—the city of New York—where the court is sitting.

Depositions received in evidence by the master.

(Complainant rests.)

Adjourned to September 20, 1881, 2 p. m.

106 SEPTEMBER 20, 1881.

Adjourned by consent to Friday, September 30, 1881, 2 p. m.

SEPTEMBER 30, 1881.

Present: R. S. Crane, counsel for complainant, no one appearing as counsel for defendants.

Adjourned to Friday, October 7, 2 p. m.

NEW YORK, *October* 7, 1881.

Present: Mr. Hyde, for defendants; Mr. Crane, for complainant.

Adjourned to October 17, 2 p. m.

NEW YORK, *October* 17, 1881.

Present: F. H. Betts, Esq., for defendants; R. S. Crane, Esq., for complainant.

Counsel for defendants moves to dismiss the proceedings in this cause, and that the master make a report finding only nominal

profits made or received by the defendants and nominal damages suffered by the complainant on the ground that no basis has been laid before the master to compute or estimate the complainant's damages or the defendants' profits, and that such evidence as has been introduced on the part of the complainant is wholly conjectural and speculative, and does not afford any basis for measuring the alleged value of the alleged invention in question.

Defendants' counsel comments upon the deposition of the complainant Munson taken in Chicago, and particularly to his
107 answer to the 41st cross-interrogatory, to show that he has never received royalty for the use of his invention, and to his answers to interrogatories 7, 19, 20, and 39, as showing that his estimate given in answer to interrogatory 20 as to the money value of the use of the patented invention is only opinion, and gives no basis or evidence why the rate mentioned is fixed upon.

Counsel for defendants also moves that the deposition of the complainant Munson be stricken out as not affording any basis for any computation.

Defendants' counsel also refers to the answers of the witness Hall to interrogatories 7, 8, 10, 11, and 12, and cites in support of his motion the cases of Sargeant *vs.* Lock Co., 17 Blatchf., 249; Garrettson *vs.* Clark, 15 Blatchf., 70; Ingersoll *vs.* Musgrove, 14 Blatchf., 541.

Adjourned to Monday, October 24, 2 p. m., to hear counsel for complainant in opposition to motion of defendants' counsel.

OCTOBER 24, 1881.

Present: R. S. Crane, Esq., for complainant; Thomas Hunt, for defendants.

Adjourned to Tuesday, Oct. 25, 1881, 2 p. m.

TUESDAY, *October* 25, 1881.

Present: R. S. Crane, Esq., for complainant; C. W. Betts, Esq., for defendants.

R. S. Crane heard against motion.

Adjourned to Tuesday, November 1, 1881, 2 p. m.

108 TUESDAY, *November* 1, 1881.

Met pursuant to adjournment.

Present: R. S. Crane, Esq., for complainant.

Adjourned to Monday, November 7, 1881, at 2 p. m.

NOVEMBER 7, 1881.

Hearing adjourned by consent to Monday, November 14, 2 p. m.

NOVEMBER 14, 1881.

Hearing adjourned to November 21, 1881, by consent.

NOVEMBER 21, 1881.

Present: R. S. Crane, for complainant; C. Wyllys Betts, for defendants.

The master denies the motion of defendants to dismiss the proceedings before him.

And also that to suppress the deposition of the complainant Munson.

Defendants' counsel excepts to the said decisions of the master.

The master also denies the motion of defendants, that he report, upon the testimony already offered, nominal profits and damages, on the ground that he has, under the order of reference in this cause, no power to make any report until all the testimony in the hearing before him has been put in.

(Defendants' counsel also excepts to such ruling of the master.)

109 WILLIAM B. CARROLL, called on the part of the defendants, testifies as follows:

I have been previously examined in this cause before the master. I am acquainted with the system of filing bonds and coupons used by the defendants during the last eight and a half years. My employment in the office of the comptroller has been, during that time, to receive the coupons and bonds when presented for payment, examine them to see if they are due, and also if they are a proper claim against the city, and to enter the dates of presentation in books kept for that purpose, and to file them away.

I have read the deposition of the complainant Munson as to the advantages of his system of filing bonds and coupons.

Q. 1. I call your attention to the answers of said Munson in his depositions 4, 5, 6, and 7, and particularly 7, in which he states that it affords a complete history of each specific bond on the page corresponding with its consecutive number; and, in case of counterfeits, overissue, loss, or theft, an immediate detection thereof will be discovered, and the real value derived by this plan would be the actual amount saved by it to the corporation issuing the bond. Please state whether these advantages have been realized through Munson's system by the city of New York, and give your reasons for any opinion you may express.

(Objected to on the ground that he has not shown himself a sufficient expert to testify on this subject and on the ground of the question embracing a variety of subjects and asking for conclusions; question admitted; exception taken.)

110 A. It has not, for several reasons:

1st. The coupons are not pasted in at the time of payment, as it would be impossible for a clerk to do it, as they are presented in such large quantities and so mixed up that sometimes three or four months would elapse before they would be pasted in the books.

2d. A book is kept in the department—the financial—in which the numbers corresponding with the coupons are checked off at the time of presentation.

3d. The time that would be required to sort, trim, and paste the coupons in the registers would occupy the time of a great number of clerks. I don't believe that it is a possibility to do it.

I have never had any experience in receiving counterfeit coupons, nor have any ever been presented to me, nor has there been any

overissued coupons presented. When coupons have been presented before they are due the dates printed on the coupons cause their immediate detection.

If counterfeit coupons had been presented they would have come to my immediate knowledge, and such would have been the case with overissued coupons; but it might or might not with overissued or counterfeit bonds.

To the defendants Munson's system has been of no advantage in respect to overissued or counterfeit coupons.

In respect to the loss or theft of coupons, there has been but one instance during my acquaintance with this system, and Munson's system was of no advantage whatever in that instance of lost coupons, as the books are never referred to or used except when the coupons are pasted in; and the notification of the loss of these coupons of which I am speaking was filed in the department and
111 the parties were notified that due care would be used to prevent their payment to other parties, but, as they were payable to bearer, the city, of course, was not liable. I notified the parties in this case myself personally. These lost coupons were in fact never presented. I do not remember the amount.

Q. 2. You spoke of a book kept in the department in which the numbers are checked off on presentation; please produce one of those books and explain the same and how long such books have been used.

(Objected to as calling for outside matter not included in the scope of Munson's invention, and in which the complainant has no interest, and for the further reason that it is clearly incompetent and immaterial to go into the general working of the finance department, especially if it is attempted to be shown that these present books are used outside of Munson's system and have no relation whatever thereto; question admitted and exception taken.)

A. This book or series of books called "ticklers" have been in use since 1873, about the same time I think the Munson book began to be used.

On the top of each page is the title of the bonds between certain numbers and the dates when the bonds fall due. On the left-hand side of each page are numbers representing the numbers of the bonds between the numbers specified on the top of the page. The pages are divided into parallel columns, representing the years in which the coupons fall due, the years being printed at the top of such parallel columns. Each column is subdivided into two divisions, representing the months of each year on which the coupons fall due, and with the name of the month printed at the top. Each coupon
112 has a separate square allotted to it, in which the date of its presentation is entered. The coupons are not paid when they are presented, and when paid no entry is made thereof in these ticklers. The entries in red ink in the squares represent the date on which the coupons have been received in bulk from the London agency, and which were paid there. The entries in black ink represent the coupons that are paid in the city of New York.

Book produced by the witness and as to which he has testified is marked by the master "Tickler No. 1, November 21, 1881," for identification.

Adjourned to November 23, 1 p. m.

NOVEMBER 23, 1881.

Present: Counsel as before.

Examination of the witness CARROLL resumed:

Q. 3. Do you have in the office "ticklers" similar to the one produced to keep a record of the bonds and coupons which are filed away in the Munson registers?

(Same objection as last mentioned; question admitted and exception taken.)

A. Yes, sir; since 1873, to my knowledge.

Q. 4. How complete a record was kept in these ticklers since 1873 of the presentation of coupons of those bonds for which you used the Munson registers?

(Same objection and exception.)

113 A. As complete a record as possible.

Q. 5. What was the advantage of keeping these "ticklers?"

(Same objection and exception.)

A. It was a more expeditious way to keep an account of the coupons that were paid by the finance department and a great deal less trouble.

Q. 6. You speak in the last part of your answer to int. 2 of coupons received in bulk from the London agency; were those coupons those of the bonds which were filed in the Munson registers?

(Same objection and ruling and exception.)

A. There are no bonds filed in the Munson registers except those which have been surrendered to the finance department to be exchanged for registered bonds, and as the unpaid coupons are surrendered at the same time, of course no coupons could be paid in Europe belonging to such bonds. The Munson registers were, however, intended for the filing of the coupons attached to the bonds sent to the London agency.

Int. 7. Now, state what were the bonds for the filing of which the Munson registers were obtained by the city.

A. There were $15,000,000 of gold bonds, due in 1901, $3,000,000 of currency bonds, due in 1890, and $2,384,000 of gold bonds, due in 1896; that comprises all the bonds for which these registers were obtained or used.

114 Int. 8. Were there any part of these bonds or their coupons which were never placed in the Munson registers? If so, state what proportion, and why.

(Objected to as incompetent and immaterial and calling for conclusions; question admitted and exception.)

A. I have examined every register and every page of every register, and there is not a single page but that has a bond or some coupons pasted on it. We pasted in these registers all the bonds that had been exchanged, and all the coupons that had been paid, down to the time of the service of the injunction in this case; we did not paste the coupons in day by day as paid, but would generally wait until the bulk of each certain dividend was paid and then the coupons we had on hand would be pasted in. At the time the injunction was served there may have been coupons on hand that were never pasted in.

Int. 9. Was each coupon pasted in the separate square reserved for it in the Munson register?

A. Yes; except in the case of bonds being surrendered for exchange into registered bonds; then the coupons were pasted in the register in sheet form.

Int. 10. What was your custom in regard to the bonds and coupons sent to the London agency? Please state where those coupons were paid, when received by the department, and how pasted in.

A. The coupons paid by the London agency were sent to the finance department about twice a year, in bulk; after entering such coupons in the ticklers they were then pasted in the Munson registers in their appropriate places, each one in its proper square.

Int. 11. What proportion of the bonds for which the Munson registers were obtained were taken by the London agency and the coupons thereof paid in London?

115 A. There were $15,000,000 of bonds. The gold bonds, the other bonds I have mentioned in my answer to the 7th int., were not sent to London. I cannot state what proportion of the coupons belonging to such $15,000,000 bonds was paid in London and what paid here. Sometimes for a given dividend more would be paid in London and sometimes more here.

Int. 12. In respect to the bonds taken by the London agency, of what value to the city were the Munson registers as books of reference to show what coupons had been paid.

(Objected to as immaterial and incompetent, calling for conclusions, and the witness not having shown that he is an expert for that purpose or that he has made any calculation thereupon; question admitted and exception.)

A. None.

Int. 13. Were any of the Munson registers ever used for the purpose of reference to see what coupons had been paid?

(Question waived.)

Int. 14. For what purposes were the Munson registers used in the finance department?

A. They were used to paste the coupons in that had been paid and also to paste any bonds in that may have been surrendered to be exchanged for registered bonds.

Int. 15. Were they used for any other purpose?

A. None that I knew of, unless possibly to serve as a check upon the ticklers in case of any dispute arising as to whether a coupon

had been paid or not. I mean by that if the coupon was pasted in it was self-evident that it had been paid.

116 Int. 16. How often during the time of the use of these registers did you personally refer to them for the purposo last stated?

A. But once, to the best of my recollection, that being the case referred to by me in my last examination when coupons had been lost.

Int. 17. During the time of the use of these registers was your position or employment such that you would know of any question or dispute arising as to the payment or non-payment or loss of coupons?

(Objected to as leading and incompetent; admitted and exception.)

A. To the best of my knowledge, all questions relating to coupons have been referred to me for answering, as I have entire control of the coupon business as far as receiving them, recording them, and pasting them or having them pasted in their proper places.

Int. 18. I now call your attention once more to the answer to question 7 of Mr. Munson's evidence, in which he speaks of the detection of a counterfeit, overissue, loss, or theft of coupons and says, "The real value derived from this plan would be the actual amount saved by it to the corporation issuing the bonds." Please state what has been the actual amount saved by the use of the Munson registers to the finance department with reference to counterfeit, overissue, loss, or theft of bonds or coupons.

A. Not one cent.

Int. 119. What is the custom of that department in regard to the length of time that elapses between the presentation and payment of coupons?

Question withdrawn.

117 Int. 20. Please state what has been the *modus operandi* of paying those coupons at the finance department.

A. The parties presenting the coupons for payment are obliged to schedule them on blanks furnished by the department, putting down the numbers on each coupon, except where they run consecutively, and stating the aggregate amount of such coupons. These coupons and schedule are then left with the department, and the parties presenting them are — a memorandum receipt stating the aggregate amount of the coupons presented. A voucher is then drawn in favor of such party presenting the coupons for said amount, and then a warrant on the city treasury is drawn for said amount. The warrant and voucher and schedule are then given to the auditor of accounts, and he audits such amount for payment. The coupons are canceled after examination by the clerk originally receiving such coupons, and they are then given to the disbursing officers; the warrant and voucher after, and it goes to the comptroller for his signature. It—warrant, voucher, and schedule—are then sent to the mayor for counter-signature of the warrant. They are then returned to the finance department for signature of the warrant by the cham-

berlain. They then are again returned to the comptroller for his counter-signature of the warrant, and are then sent to the disbursing officer for payment upon presentation of the memorandum receipt aforesaid. After payment of the warrant the voucher, schedule, and mem. receipt, together with the coupons, which have been examined by the disbursing officers, are then returned to me, and after I find that the right amount of coupons have been returned to me I keep the coupons and give the voucher, schedule, and
118 mem. receipt back to the disbursing officer, which he causes to be filed in the department. I keep the coupons until most of the dividend is paid before pasting them in the register, in order to avoid the frequent handling of the registers.

Adjourned to November 29, 2 p. m.

NEW YORK, *November* 29, 1881.

Adjourned to December 7, 1881, 1½ p. m.

NEW YORK, *December* 7, 1881.

Present: Counsel as before.

Examination of the witness CARROLL resumed:

Int. 21. Please look at testimony of Amos T. Hall on behalf of complainant, at int. 10 and its answer, which question reads as follows: "What, in your judgment, would be the advantage or benefit in money for the use of the plan in question?" And the answer to the same is: "The answer to that question is of course an estimate. In my opinion the saving of the labor of an accountant would amount to at least half a dollar a bond." Also please read answer to int. 12 of same witness, in which the witness says: "I fix my estimate upon the average length of time that the bonds of the corporation with which I am connected have been made to run, * * * the average being about twenty years." Now, from your experience please give your opinion upon the same question put to the said witness Hall and give your reasons.

(Question objected to on the ground that the witness has not shown that he is capable to give an opinion on that subject, on ac-
119 count of his not having yet testified that he has had any experience in keeping bonds and coupons in any other way than the Munson method in use at or before the city adopted the Munson method.)

Question suspended for the present by consent.

Int. 22. What has been your experience in the use of plans other — the Munson method of preserving or keeping or filing bonds and coupons and in recording the presentation of the same, and over what period does your experience extend?

A. Since the service of the injunction, the last of August, 1880, I believe, it has been the practice in the finance department, after the coupons are entered in the ticklers and cancelled, to have them numerically assorted, keeping each different class of coupons by themselves and filing them away in packages, running in numbers from

1 to 1,000, in compartments in cases in the safes, each package confined by elastic bands showing the face of the top coupon, which indicates the class of coupons in such package. When an unpaid coupon comes in and is paid it is put in the package to which it belongs and in its proper position as to its number.

Int. 23. (Int. 21 repeated.)

(In addition to former objections to said interrogatory, complainant's counsel further objects that the investigation must be confined to the usual way of preserving bonds and coupons in use at the time of the original infringement or of the issuing of the patent and not to any new system lately adopted by anybody, and the witness does not state that he has made any calculation whatever upon the subject.)

120 (Question admitted, subject to further proof to establish that the system now in use by the finance department and described by the witness was known and used prior to the Munson patent.)

A. In the first place there is no way possible to make an estimate of the saving, as the use of the Munson plan requires extra work, and in the city's case required the services of a clerk, whose whole duty virtually was to paste canceled bonds and coupons in the registers, and since the abolishment of the Munson method there has been an actual saving to the city of such clerk's salary.

Int. 24. Please state what the relative expense of the city has been in the matter of clerk hire for the filing and recording of bonds and coupons during the time since the service of the injunction as compared with an equal length of time during the use of the Munson system?

(Objected to, because the witness has not testified as to the amount of labor used in such filing, &c., in the one case and in the other, or that he has made any calculation in the matter, regardless of clerk or clerk hire. Question not admitted. Exception by defendants.)

Int. 24*a*. What has been the comparative amount of labor and time employed and consumed in the filing away of bonds and coupons under the Munson system as compared with the labor and time in filing and recording the same number of bonds and coupons under the system used since the service of the injunction?

(Objected to on the ground that the witness has not testified that he has made any calculation of the different amounts of labor required under each system, respectively, and, again, he has previously testified that no such calculation can be made.)

121 (Question admitted under same terms as interrogatory 23.)
(Exception by complainant to admission of question.)
(Exception by defendants to the condition referred to.)

A. As I have had experience both in filing coupons away under the Munson plan and under the plan now in use, I can state that under the Munson plan it requires at least three times as much time and labor as it does under the present plan, because the work under

the Munson plan is all additional to the work now used in the department for filing coupons.

Int. 25. In using the Munson system were mistakes ever made in pasting coupons in the wrong place; and, if so, what was the comparative time employed in filing those coupons away properly under his system as compared with the time consumed in filing under the present system?

(Objected to on the ground that we are not to inquire as to what is saved in the one system over the other except in the proper use of the Munson system; if mistakes are made or the clerk or paster does not know his business or does it improperly that subject cannot here be gone into; admitted on condition as above; exception.)

A. In using the Munson system coupons have been pasted in the wrong places, and when such error was discovered in order to get the coupon from such wrong place and place it in its proper and right place would occupy probably thirty minutes' time, whereas in the present system, where a coupon was discovered to be in a
122 wrong package, all that is required is to remove it from such package and place it in its proper package, which time would probably be from one to two minutes.

Int. 26. I now call your attention to the testimony of Mr. Hall, in which he says, "Any good accountant would prefer paying the royalty" (meaning 50 cents a bond) "rather than write out the book"—that is, a written history or memorandum of each bond and its coupons; please state from your experience your opinion upon this subject.

(Objected to because the witness does not profess to have made any calculation of the difference in time used in the two contingencies; question admitted; exception.)

A. The written history of each coupon, as entered in the ticklers as used in the department, is a complete history of the payment of the coupons as far as the city is concerned. At that time the surrendered coupon is canceled and filed away and a warrant drawn for the payment of such coupon. I would not pay, nor do I consider it worth, 50 cents a bond to abolish such system of writing in the ticklers and using the Munson system in its place.

Int. 27. What would you pay and what do you consider it worth to make this change?

Adjourned to Wednesday, December 14, 1881, 2 p. m.

DECEMBER 14, 1881.

Adjourned by consent to December 21, 2 p. m.

123 DECEMBER 21, 1881.

Present: R. S. Crane, Esq., for complainant; C. W. Betts, Esq., for defendants.

Examination of the witness CARROLL continued:

(Question is objected to by complainant's counsel on the ground the complainant has nothing to do with any rule of damages laid down by the witness, predicated upon the use of any other plans than that in suit and others in use, at or before the time of the issuing of the patent or at or before the time of the original infringement by the defendants, and especially is complainant not bound by any comparison to be made by the witness wherein an outside element, to wit, the tickler, is introduced, and that the witness has not shown his competency or expertness to testify as between the Munson plan and said other plans in use at said times of original infringements and date of patent; admitted as before; exception by complainant's counsel; restriction objected to by defendants' counsel.)

A. I would pay nothing nor do I consider it worth anything to change from the plan now in use back to the Munson plan, as I consider the present way of keeping an account of the payment of coupons far less laborious than the Munson system.

Int. 28. Please look at int. 20 and its answer and state whether the use of the Munson system would in any way simplify the *modus operandi* of paying coupons therein stated and the complicated system necessary for their payment therein detailed.

(Objected to as inadmissible and immaterial and incompetent.)

124 A. It would not.

Int. 29. Please examine the system of books for the keeping of coupons put in evidence by defendants before final hearing and marked Defendants' Exhibits A 1, A 2, and A 3 and shown upon pages 17, 18, and 19 of defendants' proofs, and state whether you understand the same.

(Objected to as last above unless the witness has used the system referred to.)

A. I do.

Int. 30. Compare that system as explained by the answers of Wm. E. Warren to int. 6 and following with the Munson system as used by the city of New York, and state what, in your judgment, is the relative advantage of either system over the other, giving your reasons for any opinion you may express.

(Same objection.)

A. In the Munson system on each page were spaces for all the coupons attached to any one bond whose number corresponded with the number at the top of the page, while in the Warren system, as I will call it, the spaces are for the first coupons only of the full or

total issue of bonds, as I understand it. The spaces on the second page would be for the second coupons of the total number of bonds, and so on, a separate page for all the coupons of a certain number and payable at a given time. One advantage I can see of the Warren system over the Munson system is that when any one series of coupons are paid and canceled it would require less labor to paste them in than would be required under the Munson system. Another advantage would be that at a glance of one page it
125 would be shown whether all the coupons of any one number payable at any one time had been paid, while in the Munson system it would require an examination of each page to ascertain if all the coupons payable at any one time had been paid.

Int. 31. Would there, in your judgment, be any advantage in either one of these systems over the other as a means for the detection of counterfeits, overissues, theft, or loss?

(Same objection.)

A. I can't see any.

Cross-examination:

Cross-int. 32. Have you ever had any personal experience whatever in the use of the Warren plan?

A. No, sir; according to the best of my recollection. I have pasted coupons in another way than the Munson system, but whether that was according to or after the Warren plan I cannot at present say.

Cross-int. 33. For whom were you working when you used this other plan?

A. The city of New York, and this was some time during the last eight years.

(Answers in narrative form:)

I have worked for the city of New York in the bond and coupon department for the last seven or eight years, to the best of my recollection; the Munson system was in use there when I commenced such service. I had not worked in that capacity before.

(The witness interrupts his examination to proceed to the
126 court-house to satisfy himself what was the plan used by him and referred to in his answer to cross-int. 32.)

On his return he says:

The plan I referred to and used was the Warren plan, substantially, with the exception that I did not have the numbers of the bonds opposite the spaces for the coupons, as shown in Defendants' Exhibit A 1, but spaces were formed only for the coupons; the books were ruled by hand by me. I would write at the top of each page the kind of coupons to be pasted thereon and the date when the coupons fell due. I used those books only for the coupons of the series of bonds issued by the late towns of Morrisania and West Farms, now annexed to the city of New York—two or three small books. These books were made when the city began to pay the

coupons on such bonds, after 1873; I think in 1874. Some of those bonds have been paid and some are outstanding, but most of these have been changed for registered bonds.

(Witness requested to produce at next hearing one of said books.)

In these books no place or page is provided for pasting the bonds and no bonds have been pasted in, to the best of my recollection.

Cross-int. 34. Have you compared the difference in time spent in pasting the coupons in the Munson and Warren plans or the one you used?

A. I have never actually compared such time nor the difference in time required to look up paid coupons as pasted according to either system; in the system I used the bonds, as they became due and were paid, were filed away in the safe in a bundle or
127 package by themselves; placed in paper boxes made for that purpose; the bonds are placed in such boxes as they are paid and cancelled; I don't know whether arranged numerically or not; other bonds than the issues last mentioned are placed in compartments in the safe since we stopped using the Munson plan; I do not place them there myself; I have seen it done often; I don't know whether they are put away numerically or not; I put away myself the coupons, no one else; they are filed away, with rubber bands, in packages supposed to run numerically from 1 to 1,000, from 1,000 to 2,000, and so on; all the coupons payable by the city, except those on the Morrisania and West Farms bonds, were pasted in books, according to the Munson system, down to the time when we ceased its use; since then they have been put away in packages as I have described.

Adjourned to December 22d, 1½ p. m.

DECEMBER 22, 1881—1½ p. m.

Present: Counsel as before.

Cross-examination of the witness continued:

Cross-int. 35. Are the coupons upon the bonds for which you used the Munson system invariably payable semi-annually?

A. They are due semi-annually, though not paid always when due.

Cross-int. 36. You state, in answer to int. 15, that the Munson registers were used to serve as a check upon the ticklers; were they of any value in that respect?

128 A. I never remember of using them but once for that purpose; that was in the case of the lost coupons that I referred to in my direct examination.

Cross-int. 37. Under the Munson system could you not, by looking rapidly through the Munson registers, learn what bonds and their formerly annexed coupons had been paid or exchanged for registered bonds?

A. Certainly.

Cross-int. 38. Under your present system would you not have to finger over a very large number of packaged coupons to learn what coupons had been paid and, in addition, have to search through the separate packages of bonds to find out what bonds had been exchanged for registered ones?

A. We would not have to touch the bonds at all to find out what coupons had been paid, but to find out what coupon bonds had been exchanged for registered certificates it would be necessary to refer to a book kept by the stock clerk, in which he enters the numbers of all coupon bonds that are presented to be exchanged for registered—if a question arose as to what coupons had been paid I would first refer to the ticklers, and if their payment was entered therein I would be satisfied they had been paid; examining and finding the coupons themselves would be no additional proof that they had been paid; in case any doubt arose as to their payment reference would be made to the coupons themselves.

Cross-int. 39. What is the difference in time that it takes to package a given number of coupons and bonds as you have described the city now do and to paste them in the Munson registers in their proper order, if you know?

A. All I know about it is that the pasting of the coupons in the Munson registers would require additional time to the system now in use.

129 Cross-int. 40. Question repeated.

A. I have never calculated the difference and cannot say.

Cross-int. 41. What is the difference in time to search for a given number of coupons under the two conditions aforesaid?

A. I have never timed it and cannot say.

Cross-int. 42. You say in answer to int. 23 that the clerk's salary who pasted in the coupons in the Munson register has been saved by the city. Do you mean to be understood that no time whatever is taken to receive, sort, arrange in numerical order, package, and deposit in the safe the city's coupons as you at present dispose of them?

A. No; certainly not.

Cross-int. 43. You state in answer to int. 24*a* that the work under the Munson plan is all additional to the one now in use; please state if you before the service of the injunction herein made the same identical disposition of the coupons paid as you now do, and still after that removed them from the safe, and afterwards pasted them in the Munson register.

A. We did, except they might not have been placed in the same compartments in the safe.

Cross-int. 44. Did you do this all yourself—the whole of it?

A. I did for a time until I had an assistant; I think I was there about a year before I had any assistant; we then did it together; after a while I did no pasting, but would help sort and arrange numerically.

Cross-int. 45. Under whose orders did you do all these things?

A. I was detailed in the stock and bond department by the comptroller, Andrew H. Green, and the stock and bond clerk and his as-

sistant explained to me the coupon work to be done in the
130 office, how it had been done, and I went to work and did it according to those instructions.

Cross-int. 46. Instead of using the ticklers could you not use the spaces allotted to each coupon in the Munson register to write what you did in said spaces in the tickler?

A. You could, but the coupons when pasted in would cover that up.

Cross-int. 47. Do you know whether any account was or is made — any books in your department of the payment of each separate coupon?

A. None, except in the tickler.

Cross-int. 48. State exactly what you wrote in the spaces in the tickler.

A. In the spaces corresponding to the numbers on the coupon representing the bond from which they were detached I wrote the date such coupons were surrendered to the finance department, as follows (supposing the coupon was presented to-day): 12–22–81. In case the numbers on the coupons run consecutively the date of presentation of the first one is entered and the spaces for the following ones are merely dittoed. Coupons were paid generally about a week, on an average, after presentation.

Cross-int. 49. Give your reasons why it was necessary to have the bonds and coupons of the city systematically preserved.

A. Merely as a matter of business—a business-like way of doing it.

By MASTER:

Cross-int. 50. In the use of the Munson register in the manner described in the patent is there any necessity for arranging the coupons numerically and filing them away as you now do before such coupons can be placed in the registers, leaving out of con-
131 sideration in your answer any formalities or modes of procedure required by the rules of the finance department.

A. None, except it lessens the labor and the chance of making mistakes in placing a coupon in the wrong place.

Redirect by Mr. BETTS:

Int. 51. Have you brought with you any of the books referred to in your cross-examination as used by the department in substantially the same way as the Warren registers? If so, please produce them.

A. I have brought the first two volumes of the books used for pasting in the coupons of the bonds issued by the late towns of Morrisania and West Farms, now paid by the city of New York. The first volume contains 230 pages and the second volume 246. Most of the right-hand pages are filled with coupons, and coupons are on some of the left-hand pages. Each coupon is pasted on separately, and the coupons on a full page run in number from about 40 to 68 or 70, according, generally, to the size of the coupons. The pages of

these books are divided into spaces by pencil or pen rulings, according to the size of the coupons to be pasted therein. At the top of some of the pages is the name of the kind of bonds to which the coupons belong and the date when said coupons are due. On the first fly-leaf of each book is an index of all the different kinds of bonds, the coupons of which are pasted in, stating the pages on which to find any certain kind of coupons. All pages not marked at the top with the name of the kinds of bonds, as well as those that are, are mentioned in the index. The coupons are pasted in these books according to their numbers, each dividend being by
132 itself or together. If one or more coupons due at any time were not presented and paid a space was left on the page in the proper place for such coupon. I find on page 3 of vol. 1 coupon No. 144 missing and a space left for it between 143 and 145. I find like instances on other pages.

The books produced are offered in evidence by defendants, and are marked for identification Vols. 1 and 2, S. D. L., Dec. 22, '81.

Int. 52. Were any of the spaces in such books used for recording any facts connected with missing coupons? If so, please refer to an instance.

A. I find on page 20 of vol. 1, in two spaces left for coupons Nos. 39 and 40, the following memorandum: "Marked canceled on register."

Int. 53. Please compare the system shown in these volumes with the Munson system as used by the city and state what advantage either system has over the other in enabling you to see at a glance whether any particular designated coupon or coupons of a designated bond is paid or unpaid.

(Objected to as having already been gone into before final hearing and irrelevant and immaterial; admitted and exception.)

A. I don't see any advantage of one system over the other.

Int. 54. What is the advantage of one system over the other in enabling you to record in spaces left for the coupons, and thus see at a glance in respect to any specified coupon any statement respecting its loss, overissue, cancellation, counterfeit, destruction, or other fact?

(Same objection continued.)

133 A. I can't see any.

Int. 55. Please make the same comparison between the Munson and the Warren system, as you may be able to judge of the latter, by the use of the system shown in vols. 1 and 2.

(Same objection.)

A. There is no preference at all, so far as recording, &c., is concerned.

Int. 56. Please compare the two systems mentioned in the last answer—*i. e.*, Munson and Warren's, and state what is the advantage of either system over the other as a means of a complete and systematic filing and preservation of coupons.

(Same objection.)

A. The only advantage the Warren system has over the Munson is that it would require less time and less labor to paste the coupons under the Warren system than it would under the Munson system.

Int. 57. Comparing these two systems, state whether, in your judgment as derived from your experience, it is or has been of any advantage to the city of New York, as a means of reference, to have their coupons filed away in the Munson book with all the coupons of a certain bond together in their order?

(Same objection.)

A. To the best of my recollection, there has never been but one case where a reference had to be made to the books, under both or either system, and that was no advantage to the city of New York, but for information to outside parties.

134 Int. 58. Has the question ever arisen, while you have been in the department, or could a case arise, in which it would be a pecuniary advantage to the city of New York to have the question determined whether all the coupons of any designated bond were paid?

(Same objection.)

A. There has never any such question arisen, to the best of my recollection, nor do I know of any case where it could arise.

Adjourned to January 5, 2 p. m.

JANUARY 5, 1882.

Adjourned to January 11, 1882, at 1½ p. m.

JANUARY 11, 1882.

Present: Counsel as before.

Cross-examination of the witness CARROLL by Mr. CRANE:

The Munson registers were in use when I went into the coupon department, or stock and bond clerk's office, which was in 1873, and I believe they had been used for about a year previous; I went into that office the latter part of 1873.

I think the Warren books were first used in the latter part of 1874.

Cross-int. 59. In the Warren books, so called, was there any designated space appropriated or used for the pasting in of any designated bonds?

135 A. In the so-called Warren books there are blank pages on which the bonds could be placed, but there was no designated place for any particular bond, and no bonds were ever placed in such books.

I have never compared the difference in time required to paste the coupons in the Warren books and in the Munson books.

The same disposition was made of the coupons before they were pasted in the books in respect to the Warren books and the Munson books.

We used ticklers when we used the Warren books as when we used the Munson books, but in the former case they were not exactly like those used in connection with the Munson books.

In the Warren ticklers we used the registers of the bonds issued by Morrisania and West Farms, and in each column, at the top, we put the year, and opposite each number of the coupon we would put, on its presentation, the date when it fell due instead of the date when it was presented. In some cases after writing in the date when a coupon fell due I have also entered the date of its presentation.

W. B. CARROLL.

Adjourned to Monday, January 16, 1882, at 11 a. m.

136 JANUARY 16, 1882.

Adjourned by consent to Monday, January 30, 1882—1 p. m.

JANUARY 30, 1882.

Present: Counsel as before.

JOHN J. DONOVAN, a witness called on the part of the defendants, being duly sworn, testifies as follows:

I am general book-keeper of the Delaware and Lackawanna Railroad Company line at Avondale, New Jersey; am 41 years of age; I have been with that company since October 4, 1869; have been general book-keeper since April, 1873.

Int. 1. Will you explain the system of filing away coupons, if any such existed, which had been in use by that company during the time of your employment as book-keeper?

(Objected to as immaterial, and the system having been illustrated and explained by some one from this company before final hearing, and incompetent and immaterial.)

A. There is one book made for each year, which is intended for two payments, as the interest on our bonds are payable semi-annually; there are spaces allotted for each coupon from the number on the first bond to the number on the last bond. The system which we used is that which is known as the Warren system.

I here produce one of the books used by our company for the Delaware, Lackawanna and Western second-mortgage bonds, commencing March, 1865, and extending down to and including the
137 payment of September, 1865, for interest on such bonds. I understand this system was invented by William E. Warren. At the top of each page is the date or month of the payment, as March, 1865, and September, 1865.

On each page the coupon spaces are numbered consecutively from 1 to the last coupon of the series of bonds; in this instance from 1 to 2689. Coupons of different bonds, but of the same payment, are placed upon each page.

The sheet hereto attached, marked Exh. "Del. and L. R. R., January 30, 1882," is a copy of the first page of the book produced by

me, the coupons being pasted in the spaces upon which writing has been made; the other spaces on the first page in the book have no coupons pasted in them, and are marked with a cross in blue pencil. The cross indicates that the interest or coupons has been registered or that the bond has been retired. If a space had no coupon in it or mark it would indicate that the coupon for such number had not been paid.

Int. 2. For what are these books valuable?

(Same objection.)

A. As a reference that the coupons are or are not paid, as the case may be, they would be a detection for the overissue or counterfeiting of any past-due coupon, for the reason that two coupons for the same number and same payment being presented one must be an overissue or a counterfeit. If there were any coupons that were destroyed or lost that book would be a record that they had not been paid. The spaces for coupons could not be utilized to write therein any information as to the coupon. If the interest for any bond
138 has not been made for any particular payment, the party representing himself as being the owner of the coupon and that it has been mislaid or lost, the company will pay him the interest upon the receipt of a bond of indemnity, and in the spaces allotted for such coupons a history of the transaction is made. If it was desired at any time to find out whether any particular coupons of any particular payment had been paid, lost, counterfeited, overissued, stolen, or destroyed I should refer to the book, to those numbers, and would there find either the coupon itself or a record of what had become of it, or a blank space indicating that it had not been paid and had no record as to it.

Int. 3. I now show you a system of filing away coupons and bonds, called the Munson system. Please state whether you understand that. If so, please compare it with the Warren system used by your company and state what, if anything, is the advantage, either as to convenience or completeness of record of either system over the other, either as a system of filing or a system of record and detection.

(Objected to, as it has never been shown that the witness has used the Munson system, and hence not competent to testify as to any comparison between the two; question admitted; exception taken.)

A. I understand the Munson system, with one exception—that is, in relation to the coupons cut off registered bonds. I can't say, as far as any record is concerned, because I have had no information as to the Munson system as to what had become of interest on bonds that had been registered or retired or lost or stolen or disposed of in any way, except by payment.

139 In the Munson system there are spaces for each coupon, in which any record as to such coupon could be made; there is one advantage which I see in the Warren system, which is in relation to the saving of labor, and not so liable to the making of mistakes in pasting in coupons in their proper places—that is, it is

easier to paste the coupons in the Warren system and less liable to mistake, because the coupons are pasted in consecutively and you do not have to turn from page to page, according to the number of the bonds. In the Munsom system there must be as many pages as bonds.. In the Warren system there are only as many pages required as are equal to the whole number of bonds divided by the number of coupons on a page, which, in the book I have bought, is 24. As to mistakes in filing away the coupons in the Warren system, you need only keep in mind the number of the coupon, while in the Munson system you have to keep in mind the number of the bond and also that of the coupon. By the Munson system I do not see but that the record is the same in respect to completeness as in the Warren system. I see one more advantage in the Warren system, which is that it is not necessary to have all the books made at one time, as one at a time for the payment of one year's interest is enough; but by the Munson system it is necessary, as I understand it, to have the series of books complete. As to reference of past transactions, as far as the record is considered, I consider that it is much easier to turn to a payment of interest than it is to turn to the bond, because a person will be more apt to remember the date of a payment than he would the number of his bond. According to my experience and according to the Warren system I could tell you at any time the interest past due and not paid by date, but not the number of the bond; but it would be a matter of some trouble to tell at any time
140 the amount of payment of interest upon any particular bond.

Int. 4. Has it been your experience that the question has arisen as to how many coupons of a particular bond have been paid?

A. Yes; but not by anybody outside of the company.

Int. 5. In your judgment, which is of most advantage to the company issuing the bond, to be able to determine easily by reference to the books what payments of a certain date have been made or to determine easily what coupons of a certain bond have been paid?

(Objected to as immaterial and not binding the complainant as to what has been the experience of this particular company; question admitted.)

A. I should think that it would be more advantage to the company to know the amount paid according to date and not according to the number of the coupon or bond.

Int. 6. Please now compare the Munson and Warren system and state, from your judgment, derived from your experience, whether there would be any pecuniary advantage to the company issuing a bond in the use of either system over the other.

(Objected to, as the witness has not shown he has used the Munson system at all, and that the Warren system does not comprehend the pasting of any bond in the book, and hence the scope of the Warren system is not equal to the Munson system, and therefore no legitimate comparison can be made; question admitted; exception taken.)

141 A. In the issuing of the bonds, I should say no; in the filing of the coupons, I should say yes, because in the Warren system it would not require as many books at the start; one book would be sufficient; and in the second there would be a saving of labor in pasting in the coupons in the Warren system over the Munson.

Int. 7. What has been the custom of your company in regard to the filing away of bonds or their cancellation?

(Same objection, and as not binding complainant.)

A. When the bonds are presented for payment and paid by the treasurer, and afterwards handed over to the transfer clerk, who files them away after recording their payment in the bond ledger.

Int. 8. In your judgment, what would be the pecuniary advantage to the company as compared with this system of filing away bonds, as mentioned in your last answer, to be able to file them away by pasting them in books, in connection with coupons?

(Objected to.)

A. I don't see that there is any.

Int. 9. Please state about how many books for filing coupons your company has which have been used according to the Warren system.

A. I cannot answer that. There are a great many. There are about twenty-five books in this one series of second-mortgage bonds, one of which books I have produced to-day. These bonds were issued about 1856 and matured in 1881.

Cross-examined:

142 A. I have never seen the Munson system before to-day, and have never had any experience as to the difference of time it takes to file the coupons under the two systems, or to hunt up coupons under the two systems. In the two systems, after the coupons have all matured, the books are the same in number if the coupons are filed in books like that produced by me.

J. J. DONOVAN.

Adjourned to Feb. 2, 1882, at 1 p. m.

NEW YORK, *Feb.* 2, 1882.

Adjourned, at request of counsel for defendant, to Feb. 8, 1 p. m.

NEW YORK, *Feb.* 8, 1882.

Present: Counsel as before.

JOHN O'BRIEN, a witness produced on the part of the defendants, being duly sworn, deposes and says:

I reside in the city of New York, at No. 19 East Twenty-sixth street, and am a banker and broker at 58 Wall street.

Int. 1. Are you familiar with the filing and preservation of coupons in books designed for the purpose. If so, state when and where you first became familiar with it and for how long you have known it.

A. I am familiar as far as my own experience is concerned, having adopted a plan when I first began to file coupons which had been paid; that is about twenty-four or twenty-five years ago. When I have had any coupons to file away I have since then used that plan and have never changed it. I was treasurer of the Second Avenne railroad when I first commenced to file paid coupons. I have also used that plan in my own office for a church corporation.

143 (Witness produces a book of the Second Ave. R. R. Co. first mortgage coupon bonds, commencing 1st June, 1865.)

(Defendant's counsel admits that the plan used by the witness is the same as that called the Warren system, as to which evidence has been heretofore given.)

The witness continues: The coupons in the book produced are pasted in in numerical order in spaces allotted to them and numbered for them. In case a coupon was not presented until some time after it was due a space was left for it in the book and it was pasted in such place when it was paid.

Int. 2. Are you acquainted with the system of filing bonds and coupons invented by Mr. Munson and now in controversy?

A. I can't say I know about his invention; I have seen a system similar to this in use (pointing to a book), which is the Munson system; I didn't know whether it was patentable or not.

Int. 3. Is your acquaintance with the filing away of coupons and their preservation in spaces allotted to them and numbered for them in books sufficient for you to estimate the comparative merits and value of this Munson system and your own plan used on the Second Avenue R. R. Company?

(Objected to, as the witness is not shown to have ever used or known anything about the merits of the Munson system, and, further, that it has been decided that the Warren and Munson systems are entirely different, and as immaterial and incompetent; question not admitted; exception.)

Int. 3*. Are you familiar with the needs of a corporation
144 issuing a series of bonds and coupons in respect to the filing away of the same when presented and the noting of any loss or counterfeits, and also as to the need of any reference to such coupons and bonds to determine what has been paid and what has not been paid?

A. It is quite proper for a corporation when notified of the loss of a coupon to guard against a wrong payment, which the Warren plan would do as well as the Munson system; quite as well. I have never had a notice of the loss of a coupon such as have been paid at my office, nor of the counterfeit or destruction of any bond or coupon payable at my office—Wm. & John O'Brien.

Int. 4. It has been testified for the complainant herein that the value of the Munson system to any coporation using it is fifty cents for each bond issued. Please state from your own knowledge, derived from your experience in the filing away and preservation of coupons in books and in numbered spaces allotted to them, what, in

your opinion, is the value of this Munson system, as compared with your own or the Warren system, to the corporation using it.

(Objected to on the ground that it has been determined in this action that the Warren and Munson systems are different, and, further, that the witness does not profess to know anything whatever about the workings of the Munson system, and, further, that the question is not correct in the statement that it is fifty cents for each bond issued simply and alone, said testimony being that it was fifty cents a bond for using the Munson system instead of the old system of packaging.)

145 (Question modified by inserting after the words bonds issued the words "as compared with the system of filing the coupons away in packages *en masse*.")

(Further objected that there is no proof that the witness ever filed bonds and coupons *en masse* in packages; question admitted; exception taken.)

A. I would not give fifty cents in all for the privilege of using any other system in preference to my own; the Munson system is a little neater.

Int. 5. Of what pecuniary value is it to a corporation issuing a series of bonds and coupons to keep a record of any kind of the loss, destruction, or counterfeit or theft of any issued bond or coupon?

A. I don't consider it of any advantage to the company, only an advantage to the loser of the bond or coupon. If a coupon bond payable to bearer is lost it is good against the company in an innocent holder's hands.

Int. 6. Of what pecuniary advantage is it to a company issuing bonds and coupons to be able to tell by immediate reference, without any loss of time, which of the coupons of any given bond has been paid or not paid, and state upon what you base your judgment?

(Objected to, as the witness does not profess to have had any experience whatever on the subject; question admitted; exception.)

A. I can't say what the pecuniary advantage would be.

Int. 7. In your experience of twenty-five years has an occasion ever arisen in which either of your companies would have derived any pecuniary advantage by being able to discover more expeditiously than could be done by your system of filing coupons just what coupons of any given bond were paid or not?

146 A. No, sir.

Int. 8. Has it been your experience when bonds are paid to file them away in packages?

A. No, sir; the bonds which have come due and been paid and canceled I have always destroyed.

Int. 9. What, in your opinion, as compared with the system of destroying paid bonds, would be the pecuniary value to the corporation of being able to file them away in a book, each bond on a page opposite to the page containing its coupons?

(Objected to, as witness has no knowledge as to the latter part of the question; not admitted; exception.)

Int. 10. In your opinion, is any system for the preservation of bonds after they have been paid of any pecuniary advantage to the corporation issuing them?

A. If a bond is paid and satisfaction piece recorded I do not see any advantage of keeping the bond on file.

Int. 11. Please compare the so-called Munson system with your own and state whether there is any advantage in either system over the other as to the ability to record in the spaces allotted to each coupon any facts, such as counterfeit, loss, or destruction.

A. There is so little advantage, in my mind, that I would not be willing to pay the expense of having a book ruled by print rather than use my system, in which the books were ruled by hand.

Adjourned to February 12, 1882, 12 m.

NEW YORK, *February* 12, 1882.

Adjourned to February 15, 1882, 12 m.

147 NEW YORK, *February* 15.

Adjourned to February 21, 1882, 1 p. m.

NEW YORK, *February* 21, 1882.

Present: Counsel as before.

Cross-examination by Mr. CRANE:

Cross-int. 12. Do you, from your experience, think that it is safe and profitable for a corporation to preserve its paid coupons in a systematic manner in books?

A. I don't know as there is any profit about it; the safety depends upon where the coupons are kept. I do not know as there is any advantage to a company in keeping its coupons after they are paid.

Cross-int. 13. When did you commence to preserve coupons in books?

A. I think some time in 1857.

Cross-int. 14. About how many books have you filled with coupons under your plan?

A. Probably not more than four or five; each book would hold probably from four to five hundred coupons.

Cross-int. 15. Did you have the pages of your books divided into spaces to receive the coupons just before the semi-annual interest became due?

A. My books were ruled as we needed them to put in coupons—not the whole book at once—and for the coupons that had not been paid spaces were ruled to suit the size of the coupons not yet presented.

Cross-int. 16. You could not make any memorandum in your books for filing the coupons of any fact pertaining to a coupon
148 due a year after its maturity or later under your plan from the fact that the spaces were not made to receive such coupons, could you?

A. I don't see the necessity for making any such memorandum; but if there was I could use whole sheets of the book; that is one of the advantages of my plan.

Cross-int. 17. In how many instances did you use any such sheets for such purpose?

A. I never had occasion to use any in any instance.

Cross-int. 18. Did you ever file bonds and coupons away *en masse?*

A. For a limited time only; perhaps for two or three months, waiting for a committee to destroy them; for instance, during the last three months I have destroyed about twenty-five bonds ($50,000.00) which I had filed *en masse* two or three months previous, waiting for a committee to destroy them.

Cross-int. 19. You say that if a bond is paid and a satisfaction piece recorded you see no reason in keeping the bond on file; why, then, did you so carefully preserve the coupons in books?

A. Well, there was no occasion for keeping the books after the bond had been paid; the books in which coupons had been filed were made for a series of years and paid coupons were filed in rotation in the coupon book; the bonds I spoke of have been destroyed, but the coupon books remain in my safe so much rubbish.

Cross-int. 20. Suppose you desire to pay a series of bonds before they became due or to exchange them for registered bonds or otherwise and issued a call for that purpose and a portion of the bonds and coupons were returned, paid, and canceled, and the balance the holders desired to retain until they matured; how would you
149 preserve the paid or exchanged bonds and coupons until the others became due and were paid under your plan?

A. I should file them away in numerical order *en masse* in packages.

Cross-int. 21. Could you use your books for that purpose?

A. The books were not needed for that purpose; it was not a part of the plan; the coupons attached to the bonds paid or exchanged would not be put in the books, but would be filed away with the bonds; the coupons previously paid would have been pasted in the books.

Cross-int. 22. Would it not take more of an accountant's time to make out a satisfaction piece and then properly preserve that than to simply paste the bonds in a book?

A. The satisfaction piece is filed where the mortgage is recorded; the accountant has nothing to do with it; there is no satisfaction piece of a bond, unless the bond is secured by a mortgage, to my knowledge.

Cross-int. 23. Can you testify positively as to the difference in time spent by a clerk in filing bonds and coupons under the Munson system and that spent in packaging the same number *en masse?*

A. There is a great difference in clerks; for myself, if I was the clerk, I had rather file them away on the package plan; it would be a saving of time.

Cross-int. 24. Question repeated.

A. I don't know that I have ever kept the time of a clerk employed in that business while he was doing it.

Redirect:

Int. 25. How long were you treasurer of the Second Avenue R. R.?

150 A. Ten years and a half—from March, 1856, to October, 1866.

Int. 26. Did you use your system of books during all that period?

A. Yes, sir; for three different issues of bonds.

Int. 27. How long did you use your plan for the church?

A. Ten years, from 1871 to 1881; one issue, but different denomination of bonds.

Int. 28. You were asked on cross-examination as to what you would do, under your plan, in case bonds were paid or exchanged before they became due, and you stated that you would file them away *en masse* in numerical order; in your opinion, would there be any advantage in a case of that kind in the Munson system, either in economy, safety, or saving of time?

A. I think not; I would prefer the package plan for one reason, among others. If a committee (say of three, the usual number) of examination was appointed, the package plan would allow each member of the committee to examine the bonds at the same time, while in the Munson plan but one of the committee could take charge of the book at one time, and a great deal of time could be saved in that way to the committee.

Int. 29. In your opinion is there any pecuniary advantage to a corporation issuing bonds, as distinct from coupons, to be able to file them away in books under the Munson plan, as distinguished from filing them away in bundles?

A. No advantage whatever, in my opinion; on the contrary, I think there is an advantage in the package plan.

151 Int. 30. In your last cross-answer you stated that you did not know that you had ever kept the time of a clerk employed in the business of filing bonds and coupons while he was doing it; as such business is done by clerks, practically, would it be possible to keep their time in such a matter?

A. The time could be kept of a race-horse if you had a watch in your hand. The time of a clerk in such business could be kept if he had nothing else to do and you kept your watch in your hand counting time, but I have never known it to be done.

JNO. O'BRIEN.

(Defendants' testimony closed.)

Adjourned to March 10, 1882, 2 p. m.

MARCH 10, 1882.

Present: Counsel as before.

(Complainant's testimony closed.)

Defendants' counsel calls the attention of the master to cross-question 23, put to the witness Carroll (Record, p. 38), and the condition upon which such question was admitted, and moves the master—

That the condition upon which such question was admitted be struck from the record;

Or that defendants may be permitted to introduce further evidence to show that the particular method or plan of filing away coupons described by said witness Carroll in his answer to cross-ques-
152 tion 22 had been known and used prior to the issue of complainant's patent.

(Complainant's counsel objects to such motion as being too late, the testimony having been closed, and that it is improper to change the record to suit the shifting theories of the defendants' counsel.)

Held by the master that, in his view of the matter, it is not proper now to alter the record by striking out the condition referred to, as complainant's counsel does not consent thereto.

But he grants the motion of defendants' counsel to put in further evidence to show that the particular plan or method of filing away coupons mentioned by the witness Carroll in his answer to cross-question 21 had been known and used prior to the complainant's patent, such evidence, however, to be confined to such enquiry or fact and not to extend beyond it.

Adjourned to March 16, 1882, 1 p. m.

NEW YORK, *Mar.* 16, 1882—1 p. m.

Present: Counsel as before.

ARTHUR HENDRICKS, a witness produced on the part of the defendant, having been duly sworn, deposes and says:

Direct examination by F. H. BETTS:

I reside in Washington, D. C.; I am a clerk in the register's office of the Treasury Department. The register's office is one of the bureaus of the United States Treasury Department.

153 Int. 1. Do you know how the paid coupons of bonds of the United States of all the different loans are preserved?

Question waived for present.

Int. 2. How long have you been connected with the Register's Office?

A. Since July 14, 1865.

Int. 3. What are your duties?

A. I have supervision of arranging, assorting, counting, and registering all redeemed coupons received in that office.

Int. 4. How long have you been familiar with the method in use in the United States Treasury Department of arranging, sorting, counting, and registering coupons?

A. From within a few months—less than five or six—from my admission into the Department.

Int. 5. And how long have you had supervision of the whole business?

A. Since the summer of 1868.

Int. 6. Are you familiar with the method in use in the Treasury Department for preserving bonds and coupons after redemption?

A. I am.

Int. 7. Please state how the United States Government preserve their redeemed bonds and coupons?

A. The coupons are first assorted, according to loans—that is, the several loans are separated; they are then again assorted by denomination—that is, the coupons of each different denomination are put by themselves; they are then again assorted by the different dates of the maturity of the coupons, and then arranged in numerical order and counted; they are then registered—that is, an entry is made in the books indicating that the coupons have been paid; that
154 entry also indicates the time and place of redemption; they are then placed on file—that is, placed on shelves for reference in boxes labeled indicating their contents; the coupons are counted in packages of 100 each, taking the numbers as they have been arranged in consecutive order, ten packages of hundreds being strapped together, making packages of thousands; and these are also arranged in consecutive order, so that the numbers run consecutively through the whole package. I produce for examination one of said packages of a thousand coupons, running from No. 11 (of $30 (value of coupon), act of March 3, 1863) to No. 8,696; these run in consecutive order—that is, the greater number follows the less, and not in the numerical order of the coupons, from 1 to 1000. The numbers of coupons that are not present in the package I have produced are either those of bonds which have been exchanged for registered stock or which have been redeemed in an account from some sub-treasurer other than the one who actually redeemed the coupons included in this package. The coupons redeemed by and received from each sub-treasurer are packaged by themselves; this package contains all of the coupons maturing January 1, 1865, of all the bonds of the denomination of $1,000, act of March 3, 1863, from No. 11 to No. 8696, redeemed by the Boston sub-treasury, arranged in the consecutive order of the numbers of the coupons; similar packages of coupons are kept for each of the sub-treasurers; the packages redeemed by each sub-treasurer are kept separate, because separate accounts are kept by the Treasury Department with each sub-treasurer. This method of preserving coupons has been in use in the Treasury Department since the year 1864, when our division was organized; we have approximately 80,000,000 coupons preserved in that way. The Government pay coupons of bonds
155 other than those of its own issue; these are coupons of bonds issued by the District of Columbia and bonds of the Louisville & Portland Canal Co.; that was a private corporation turned over to and accepted by the Government; the coupons of the two last above-described bonds are preserved in the same way I have before mentioned, but all the coupons of these bonds are redeemed at Washington, and the coupons in a given package show all the coupons between the extreme numbers which have been redeemed at all; the coupons of the L. and P. Canal Company have been redeemed by the Treasury of the U. States for about seven (7) years, of the others for about five (5) years; the Government has frequent occasion to refer to the packages of coupons to determine whether particular coupons have been paid; my experience is that no other

system that I can imagine would answer our purpose as well; the Government has pasted coupons into books for preserving them; they were arranged in scrap-book form, each page being ruled by lead pencil to provide for the coupons attached to a particular bond, the coupons for each particular bond appearing on the same page in the same order that they had when attached to the bond; that mode of preserving coupons in books has been discontinued by the Government.

Int. 8. Please state whether there were any practical inconveniences in the use of such books for preserving coupons as you have just described.

A. There were; we found such records both clumsy and superfluous; clumsy because of the great space they occupied and the difficulty of handling, and superfluous because the object of preserving the coupons in that shape had already been attained by arranging them in consecutive order, as I have before described; it
156 was necessary that the coupons should be assorted in the same way we do now before they could be pasted in such books; the books we used were destroyed by cutting out the coupons; the coupons so cut out were then preserved and arranged in packages, as I have before described; since those books were destroyed the Treasury Department has made use of no books for pasting in coupons. I personally supervised the destruction of such books by cutting out the coupons. I have visited the comptroller's office in the city of New York and have inspected the method there used for preserving coupons and the books there used for pasting in coupons. I have also examined their system of filing away coupons in packages; there is no difference between the system used in said comptroller's office and that used in the Treasury Department for filing away coupons in packages, except that the coupons filed in the Treasury Department are filed there by account as they come from the sub-treasurers, while in the comptroller's office they are filed according to dividends. I examined two systems in the comptroller's office of filing coupons in scrap-books; one was by date of maturity without reference to the number of the coupon, and the other in the order in which they were originally attached to the bonds; this latter form was identical with that once used in the Treasury Department and the books of which were destroyed, as I have testified.

Int. 9. In your opinion, derived from your experience in the Treasury Department, is there any value, either pecuniary or by way of convenience, in keeping paid coupons pasted in books, as you have described them?

A. None whatever.

Int. 10. Is there any pecuniary disadvantage or inconvenience; if so, what?

157 A. I consider it more expensive and more inconvenient; in regard to the inconvenience, coupons can be referred to, if necessary, with greater facility when arranged in packages, as I have described, and the pasting of the coupons in scrap-books and the purchase of the scrap-books would entail greater expense, and there

would be much less room required to keep coupons in packages than in books; if the coupons for each bond were pasted on a separate page it would require a great deal of labor in pasting in all the coupons maturing at a given date. I was detailed by the Register of the Treasury, B. K. Bruce, to come here and give testimony in this case at the request of counsel for complainant.

Cross-examination by Mr. CRANE:

Cross-int. 11. When did the Treasury Department begin to use the said books for pasting in coupons?

A. In 1842.

Cross-int. 12. When were those books discontinued?

A. Those books were made for the loan of April 15, 1842, maturing in 1863; the books continued to be used for some time after 1863 for putting in coupons which were presented after maturity; my recollection is they were not used at all after the early part of 1866; they were cut up shortly after that. My recollection is not clear as to the number of books used; the loan ran for 20 years, and the books were used through the whole 20 years; the books, so far as I can remember, were about 200 pages each; no bonds were put in the books, and the books were not made for the reception of bonds; the bonds were filed away separately from time to time and eventually destroyed.

158 Redirect (cross suspended):

The United States do not permanently preserve any of their coupon bonds; they are made a matter of record, showing that they have been redeemed; that record is then compared with the books in the office of the Secretary of the Treasury, and the bonds are then destroyed by maceration at the present time; registered bonds are preserved; they are arranged by denominations; each denomination is then arranged in numerical order, and they are then filed away in packages according to convenience; that has been the practice ever since I have been there. The coupons in the books used for the loan of 1842 were pasted in on every right-hand page, the left-hand page being left blank; those books were, according to my recollection, about 18 inches long by 13 inches broad.

Adjourned to Mar. 17, 10½ a. m.

MARCH 17, 1882.

Present: Counsel as before.

Cross-examination of the witness HENDRICKS resumed by Mr. CRANE:

I was a little less than 21 years old when I went into the Register's Office. I had not then had any experience in connection with bonds and coupons. The bonds of the issue of 1842 I have referred to had matured about eighteen months before I went into the Department. I had nothing to do with taking care of and filing coupons

until about six months after I went into the Department, except to register or record in books the coupons that had been redeemed; but not to paste them in books.

159 Cross-int. 13. About how many of the coupons of the bonds under the act of 1842 were outstanding at the time you took charge of the pasting of the coupons in the books?

A. After those books had been turned over to us, the note and coupon division, and the coupons had been cut out there came to said division from the 1st Comptroller's Office of the Treasury Department two or three small accounts of coupons.

Cross-int. 14. Then you personally had nothing whatever to do with the pasting in of a single coupon in these books or the supervision thereof?

A. I had not; the books were destroyed under my supervision about 1866.

Cross-int. 15. Do you know that the exact system of assorting the coupons and subsequently packaging them used by the Treasury Department, exactly as you have testified, was ever in use by any one else except that Department?

A. I do not.

Cross-int. 16. Does the Treasury Department keep a separate account with each sub-treasurer showing the specific coupons he has paid and the dates of such payments?

A. We give credit to each sub-treasurer of the aggregate amount paid by him for redeeming coupons of each issue, but do not give him credit for the specific coupons so redeemed by him except by loan, denomination, and date of maturity of the coupons; the specific numbers of the coupons redeemed are not entered in the account.

Cross-int. 17. Is it not safer and more convenient to have the coupons packaged away as vouchers to systematically keep track of the payment of the original coupons by the sub-treasurers than by pasting them in books?

160 A. Yes, sir.

Cross-int. 18. Can you imagine how such system of keeping an accurate account with the sub-treasurers could be carried on and the coupons properly preserved in any other manner than by packaging them as the Department does?

A. Other modes could be used.

Cross-int. 19. Please give us any other plan that you now know of except packaging them away as you now do and equally practicable.

A. I don't know of any other plan than that used by the Department which is equally practicable with that.

Cross-int. 20. There being nine or ten sub-treasurers who are authorized to pay coupons, and each proving his fidelity by the production of the coupons paid by him, is it not impracticable to preserve the coupons in any other way than as the Department now does?

A. It is impracticable to preserve the coupons in any other way than now used by the Treasury Department.

Cross-int. 21. When the coupons were cut out of the books, as you have before stated, what was done with them? State particularly.

A. They were arranged in numerical order; counted in packages of hundreds; then taken consecutively by hundreds and made into packages of thousands or fractions thereof; then put in boxes; then registered (that is, made an entry that each coupon had been redeemed); then placed in the file-room.

Cross-int. 22. What were the amounts of loans represented by coupon bonds issued by the Government between those issued under the act of 1842, of which you have spoken, and the date of
161 the maturity thereof, so far as you know from the records of the Department?

A. Up to and including those issued under the act of July 17, 1861, about 25,000,000 of coupon and registered bonds of every loan, about one-half is issued in registered bonds, the other part being in coupon bonds.

Cross-int. 23. As the department is carried on, was it not essential that each sub-treasurer shall have the right to have the coupons he has paid separately and systematically packaged?

A. It is not a question of right with the several sub-treasurers, but the coupons redeemed by the several sub-treasurers are kept separate and apart from each other.

Cross-int. 24. Why are they so kept apart?

A. In order, first, that the several sub-treasurers may receive the proper credits of the coupons redeemed by them; and, second, that the Treasury Department may know what particular coupons were redeemed by any sub-treasurer.

Cross-int. 25. Why does not the Government destroy the coupons as well as the bonds?

A. For the reason that the coupons are regarded as vouchers and accompany the accounts of the sub-treasurers as evidence showing that he has expended the amount of money represented by the coupons in their redemption, and for the additional purpose of showing that the coupons of a particular bond have been redeemed; the coupon bonds coming through the office of Secretary of the Treasury and being paid either by transfer or conversion into other bonds, or else being actually paid by money in the Treasury, and being payable to bearer, are as soon as a complete record has been made in the Register's office, after their transmission thereto, and such record
162 compared with the books of the Secretary's office, destroyed, because it is considered that a sufficient record has been made of the bonds, and because it is not deemed necessary to retain them as vouchers.

Redirect by Mr. BETTS:

Int. 26. You were asked the amount of loans between 1842 and 1863. Please give, so far as you know them, the different loans and their several amounts, including the loan of 1842.

A. 1842, April 15	$8,000,000
1847, January 28	28,207,000
1848, March 31	16,000,000
1850, September 9	5,000,000
1858, June 14	20,000,000
1860, June 22	7,000,000
1861, February 8 (about)	40,000,000
1861, March 2	10,000,000
1861, July 17	140,000,000

There was also a very large loan issued under another act of July 17 and August 5, 1861, the amount of which I do not remember; there was also a loan under an act of February 25, 1862, which was a large one.

Int. 27. From your knowledge of the records of the Department, state how the coupons of all of those loans, other than the one of 1842, were preserved.

A. Those coupons, on or about the year 1866, were turned over to the note and coupon division of the Register's office by the loan division of said office (so far as they had in the meantime been redeemed), and were counted, arranged, and registered and placed on file in the file-room of the note and coupon division; when they were turned over to that division they were in packages by
163 loans, denominations, and dates of maturity, and counted in packages of hundreds and thousands and fractions thereof, except the entire loans of February 25, 1861, July 17, 1861, and February 8, 1862, these coupons maturing from time to time partly in the First Comptroller's office and partly on file in a file-room attached to the Register's office, as far as they had matured up to the date of the organization of the note and coupon division of said office, were transferred in bulk without any arrangement, except by loan and denomination, to the note and coupon division, the coupons from the several sub-treasurers, however, being kept separate and apart from each other.

Int. 28. Can you give the denominations of the bonds of the act of 1842, the coupons of which were pasted in books?

A. I cannot.

Int. 29. State, as nearly as you can, how many books there were used for receiving those coupons.

A. I am unable to state accurately; they were at least forty books of about 200 pages each.

Int. 30. Were the coupons of the different bonds in those books arranged consecutively on pages in the order of the number of the bonds?

A. They were.

Int. 31. You said that the Treasury had for the last seven years redeemed the coupons of the Louisville and Portland Canal Company. State, as near as you can, the amount of that loan.

A. Between 1,500,000 and 2,000,000; about 18 years after the loan was made it was turned over to the Government.

Int. 32. When it was turned over were the matured coupons also turned over; if so, how were they arranged, when, and as they were turned over?

164 A. The matured and paid coupons were turned over to the Treasury Department, but were not arranged except by date of maturity. Immediately after being turned over to the Treasury Department they were arranged, counted in packages of hundreds, and then made up into packages of thousands or fractions thereof, then placed in boxes and registered or recorded, the numbers as so arranged running consecutively.

Int. 33. Please state the amount of the District of Columbia loan referred to by you.

A. Of the loan known as the "365, D. C.," there were 10,250,000 issued; of the others I have no recollection. The coupons of these loans were packaged in the same way as those of the Louisville and Portland Canal Company were packaged after they were turned over to our division. When the coupons of the District of Columbia were turned over they were arranged by loan, denomination, and date of maturity and counted, but not counted in packages of hundreds or put up in packages of thousands or fractions thereof; the numbers on each package were consecutive; none of these loans have separate sub-treasurer's packages; they are all paid at the Treasurer's office in Washington.

Int. 34. In answer to one of the cross-questions you stated that other modes of preserving could be used by the Treasury, though they would not be equally practicable as your system. What other modes did you have in mind?

A. Coupons could be arranged by loan, denomination, and date of maturity, and then counted and pasted in scrap-book form,
165 or could be, after having been so arranged and counted, strung or attached onto a wire.

ARTHUR HENDRICKS.

(Testimony closed.)

Adjourned to March 24, 1882, at 10½ a. m.

MARCH 24, 1882.

Hearing argument adjourned to April 4, 1882.

APRIL 4, 1882.

Argument adjourned to April 13, 1882.

APRIL 13, 1882.

Argument adjourned to April 27, 1882.

APRIL 27 and MAY 22.

Argument on part of respective parties.

S. D. LAW,
Master pro hoc vice.

166 In the Circuit Court of the United States for the Southern District of New York.

FRANCIS MUNSON

vs.

THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK AND THE COMPTROLLER THEREOF.

Testimony of Francis Munson and Amos T. Hall, taken before E. B. Sherman, on the 7th of July, A. D. 1881, at the office of John I. Bennett, in the city of Chicago.

In the Circuit Court of the United States for the Southern District of New York.

FRANCIS MUNSON

vs.

THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK AND THE COMPTROLLER THEREOF.

167 Testimony on accounting, in behalf of complainant, taken pursuant to an order of reference by the special master appointed in said cause, before Elijah B. Sherman, Esq., a master in chancery of said court for the northern district of Illinois, at Chicago, in said district commencing on the 7th day of July, 1881.

Present: The complainant, by N. W. Fuller, Esq., and the defendants, by J. E. H. Hyde, Esq.

It is stipulated by the solicitors for the respective parties that the testimony ordered by the special master to be taken in Chicago may be taken before E. B. Sherman, master in chancery of the United States court for the northern district of Illinois, instead of being taken before John I. Bennett, Esq., master, etc., as provided in said notice, which is hereto attached.

FRANCIS MUNSON, a witness on behalf of the complainant, being first duly sworn, deposes and says as follows:

Q. 1. Are you the complainant in this case?

A. I am.

Q. 2. What is your full name, age, occupation, and place of residence?

A. Francis Munson; age, 54 years; occupation is a manufacturing stationer, although I am not engaged in that business at present.

Q. 3. For how many years were you engaged in the business of manufacturing stationery, and to what extent; what did the business embrace?

A. From 1843 continuously to the middle of 1867 as a manufacturer of all kinds of commercial stationery, railroad and corporation forms of every description used in offices and counting-rooms; since 1867 to the present time have been partially engaged in the same business.

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Q. 4. In the pursuit of the business that you have described did the special subject of systematically preserving matured or paid bonds of corporations and coupons or bonds or coupons outstanding in books or registers come within the range of your experience or study? If yea, give in full such experience, when it commenced and ended, and with what and how many corporations have you at various times gathered such experience, and to what extent have you made that subject a study and under what circumstances?

A. In my relations to various corporations there arose a demand for a system of canceling, filing, and registering bonds and coupons thereof in order to afford a perfect protection against loss to the parties issuing or owning bonds and coupons thereof, this demand came to my attention in 1855 or 1856, and I continued experimenting to perfect such a system of protection until 1867—some ten or twelve years—and then patented "Munson's bond and cancelling file," a system which proves to afford a complete protection from loss by counterfeiting, overissue, duplicating, theft, or loss of any description to parties using this plan, and gives a complete history of each identical bond and coupon thereof which shall have been issued in any series by any corporation.

Q. 5. From such experience, so had by you, are you able to state what pecuniary benefits and advantages and profits are enjoyed or acquired from the use of your patented plan set forth in your bill of complaint herein?

A. The pecuniary benefit and profit is a perfect insurance against loss to the party issuing or owning bonds and coupons.

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Q. 6. The question is whether the experience described by you enables you to state what pecuniary benefits, advantages, &c., have been or may be enjoyed or acquired from the use by any party of your patented plan? If you say yes, then please state what those advantages, benefits, and profits consist in.

(That part of the question which asks the witness what profits or advantages may be enjoyed by any party by the use of his system is objected to as calling for a hypothetical conclusion of the witness.)

A. A large advantage has inured to the corporation of the city of New York by the use of this plan during the past eight and a half years in which the aforesaid described protection has been derived by said corporation in issuing a very large amount of bonds and coupons attached thereto, involving numerous series of bonds and handling of an enormous amount of money, whereby it has been a perfect security, as before described.

(Objected to as irresponsive.)

Q. 7. Does the experience had by you enable you to state what pecuniary advantages, benefits, and profits result from the use of your plan? If you say yea, state such advantages, &c.

A. The first advantage is immediate reference, it does—immediate reference to any bond specified by its number in any series of bonds—that is, bond 99, for instance, would be found on page 99 in the cancelling file. It affords a complete history of each specific bond on the page corresponding with its consecutive number. In case of counterfeit, overissue, loss, or theft an immediate detection thereof would be discovered on the first presentation of any fraudulent coupon for payment, and affording an opportunity for
170 making such memorandum in its proper place on the page of the bond file. The real value derived by this plan would be the actual amount saved by it to the corporation issuing the bond.

Q. 3. Have you any sample of your system? If so, produce and annex it.

A. I have a skeleton form, which I here produce.

(The blank or skeleton referred to is produced and offered in evidence and attached hereto, marked "Exhibit A.")

Q. 9. When bonds are issued what is the first use of this form, as indicated by the ruled and printed heading?

A. Each page of this form being numbered consecutively to match or correspond with the numbers of the series of bonds to which it applies, the first use would be in making a memorandum of its date, to whom issued, what issued for, amount, bond when and where payable, rate of interest, and a separate place for each coupon and bond, affording opportunity for making any necessary memorandum or notes.

Q. 10. You speak of the plan being valuable in case of counterfeit; state how.

A. The spaces on Exhibit A being made of the exact size and form of the bond and all of its coupons, the method of canceling on payment of coupons is by pasting each in its proper place, as designated by its number and the corresponding number as shown in the exhibit; for instance, ten interest coupons of a bond having been paid and canceled, should show them to be in their proper place on the file. Now, should a counterfeit appear of any of these ten coupons already canceled the first coupon presented for payment
171 would at once show the fact, thereby enabling the party issuing the true bond and coupons to protect itself from loss by making an immediate memorandum in its proper place; thereby a counterfeit would be at once discovered from the fact that the genuine coupon had already been presented, paid, canceled, and placed in its proper place on the files. Should a counterfeit bond appear or come to the knowledge of the issuers of the genuine bonds they could note such fact in its proper place and prevent fraud and loss.

Q. 11. How as to overissues or duplicates?

A. A duplicate would be detected in the same way; an overissue would be detected in this manner: If a corporation issued five thousand bonds there would be only five thousand pages provided for

receiving such bonds; consequently, if a bond bore a number above five thousand it would instantly show it to be an overissue, thereby preventing fraud to the party issuing the genuine bonds; for instance, in the case of the New York and New Haven railroad there was a large overissue perpetrated by its president, Robert Schuyler, amounting to an enormous sum of money, which this plan would have entirely prevented, thereby saving to said railroad company the exact amount which it was compelled to pay by said issue of one hundred and six bonds and coupons attached thereto.

Q. 12. How in the case of stolen bonds or coupons, or lost ones?

A. Bonds or coupons being stolen or lost, upon their owner notifying the corporation issuing the same a memorandum could be made in its proper place on the canceling file showing the fact; thereby the owner or holder of the bond and coupon would be protected, from the fact that on the first presentation of a lost or
172 stolen bond or coupon for payment the corporation issuing the same would at once locate the thief or finder of the bonds or coupons, thereby saving the owner or holder from loss and also detecting the thief.

Q. 13. To what saving to the corporation do you refer in the adoption of this plan? I mean any corporation issuing bonds other than in the particulars you have named.

A. A large saving would be instantly effected by instantaneous reference of its treasurer or any other officer to the file for any number or specific bond without reference to assistants or clerks.

Q. 14. Over what period of time would such facility of reference extend?

A. From the time of the first issue it would afford immediate reference during the whole life of the bond and for an indefinite period thereafter; for instance, after a lapse of years all the parties in the transaction may be dead when a quantity of unpaid bonds or coupons may be presented for payment; immediate reference to the file would at once show the true situation of the case, and thereby the proper owner would receive his dues and protection from this system; the benefit derived, of course, would be the exact amount in dollars and cents saved to the owner.

Q. 15. You mean the owner or holder of the bonds as contradistinguished from the corporation issuing them; is that it? My questions are directed to ascertain the value to the corporation of being able to immediately trace the history of all bonds and coupons that it has issued.

(Objected to as leading.)

173 A. My last answer is intended to show that the system is invaluable to the holder or owner of bonds, in addition to value to the corporation.

Q. 16. How would the case be in the instance of parts or fragments of bonds?

A. A bond or coupons may have been mutilated and portions lost; the part preserved, on presentation for payment, would at once develop the circumstances of such mutilation, which would be noted in

its proper place on the canceling file, giving the whole history of the situation; for instance, in the case of the Northampton Bank robbery, among the bonds stolen were a quantity issued by the Ohio and Mississippi Railroad Company, which were ordered by the United States court, Judge Drummond, to be paid, on the evidence of their being stolen; a memorandum of this payment having been made in its proper place in the canceling file would protect and be evidence showing that they were already paid, thereby saving the corporation from a second payment, and entitling them to demand, receive, and cancel the bonds and coupons so paid and place them in their proper position on the files.

Q. 17. In your experience have you known of extensions of series of bonds after maturity without canceling the bond; how would your plan work in a case like that?

A. I have known such an instance. In the case of the city of New York, having paid coupons on a series of bonds and then issuing a new set of coupons, having the bond extended without cancellation, these very coupons being at present on file in the comptroller's office of said city, and which are involved as evidence in this suit, my plan would be valuable by writing the facts in the case in the blank space designated in the file to be occupied by the bond,
174 which, of course, would show that reference was to be made to another file made to receive the new issue of coupons, thereby giving the exact facts of the case.

Q. 18. Did you see the registers in the office of the defendant's comptroller containing your patented plan, and also those produced before the examiner, Williams; if yea, about how many books were there in all?

A. I did see such books in both places, and, to the best of my knowledge and belief, there were about one hundred and twenty such registers and files of my invention in constant use in the comptroller's office in the city of New York.

(The latter part of the answer as to constant use objected to, as the witness has not qualified upon the question of use.)

Q. 19. What, in your opinion, has been or will be the actual benefit and advantage to defendant, in money, for the use of your patented plan for each bond and each coupon actually preserved in defendant's registers?

(Objected to as incompetent, as the witness has not been shown to be qualified to answer the question, and, further, as asking the witness the value of a future use, such use having been enjoined, and the defendant having shown no disposition to disobey the injunction.)

A. The benefit will be exactly the amount saved to the defendant, and also the value which the defendant derives by using all these registers for reference for all time, they being to this day used in the comptroller's office for such reference. The benefits derived have been specified in my various previous answers.

Adjourned to 2.15 p. m., this day.

175 2.15 P. M.

Examination resumed pursuant to adjournment.

Q. 20. State what, in your opinion, — the actual benefit and advantage to the defendant in money for the use of your patented plan for each bond and each coupon actually preserved in defendants' register.

(Objected to as incompetent, as the witness has not been shown to be qualified to answer the question.)

A. A dollar each for each bond and three cents for each coupon actually pasted in, and half that for each bond and coupon not actually pasted in.

Q. 21. Do you or do you not know what is the amount in face value of the bonds in the registers referred to by you, as prepared upon the basis of your plan and in defendants' possession? If yea, state.

A. The city of New York has bond files for thirteen different series of bonds, amounting in bonds to a hundred and fifty millions of dollars, about, the coupons of which amount to two hundred millions, more or less, making an aggregate from three hundred and fifty to four hundred and fifty millions of dollars.

(Objected to as not responsive.)

Q. 22. What, in your judgment, is the value of the use of your system by the defendants in the case of the securities you have mentioned, taking into consideration the face value thereof as you have stated it?

(Objected to as incompetent, because the witness has not been shown to be qualifed to answer the question.)

176 A. I believe the minimum value to the corporation of New York is not less than a hundred thousand dollars.

Q. 23. Did the bringing of your system to the state in which it was when used by the defendants require study or experiment, or both; if yea, did it consume time, and state to what extent?

(Objected to as immaterial.)

A. It required great study; consumed much time and many ineffectual experiments, ranging over a term of ten or twelve years. I have no hesitation in saying that I so expended at least one year continuous time, for which I have yet to be remunerated.

Q. 24. What profit could you have made on the manufacture of each of the books which you have stated you saw in the defendants' comptroller's office, and also those produced before Examiner Williams?

(Objected to as incompetent and immaterial.)

A. The books would probably cost from three to five dollars each and would afford an ordinary commercial profit of from ten to twenty-five per cent.

Q. 25. Do you include in that the value of the use of your patent?

(Same objection.)

A. I only included the ordinary business, commercial profit, making no consideration for the use of the patent.

Q. 26. State any other advantages or benefit enjoyed or to be enjoyed by defendants or any damages which you have suffered by reason of the use of your patented plan by the defendants.

177 A. While the defendant may at present not be actually using the files in the comptroller's office by placing therein canceled coupons and bonds, yet they have free access to those already pasted in and reference thereto whenever desired; thereby the defendant is deriving an actual daily benefit in the use of my invention.

Q. 27. At the time that you expended the time spoken of in experiments and study in getting up your plan what was the value of your time per year?

(Objected to as incompetent and immaterial.)

A. Ten thousand dollars per annum, from the fact that my income ranged from nine to twelve thousand dollars per annum.

Cross-examination by Mr. HYDE:

Cross-Q. 28. Have you ever personally kept a series of bonds and coupons on the plan set forth in the patent upon which this suit was brought?

A. I will ask Mr. Hyde to make an explanation; please define what you mean in your question by having kept a series of bonds.

Cross-Q. 29. I mean have you ever personally kept a record of one or more bonds with the coupons belonging thereto in accordance with the method set forth in your patent; I do not mean as an experiment only.

A. I have not.

Cross-Q. 30. Have you ever been officially connected or in any way connected with the corporation of the city of New York, either in the comptroller's office or elsewhere?

178 A. Never have been officially connected with said corporation, but have examined the bond files in use in the comptroller's office of said corporation.

Cross-Q. 31. What more is your system, if anything, than a written memorandum of the history of the bonds and coupons thereto belonging which the user of your system issues?

A. It is a printed skeleton, system, and guide for the complete protection of corporations, as stated in my direct examination.

Cross-Q. 32. What is there in your system which cannot be supplied by a written history of such bonds and coupons, and what more do you print than the numbers of the coupons?

A. It is not the printing or the writing simply in itself wherein the value consists; it is the invention of a system insuring corporations against loss by counterfeit, overissue, duplicate, theft, accident, or

loss in the issuing, negotiating, handling, canceling, and preserving bonds and coupons thereof.

Cross-Q. 33. What is there in your system which cannot be supplied by a written history of such bonds and coupons, and what more do you print than the numbers of the coupons?

A. I print the consecutive pages through the whole series of files or registers; also an exact skeleton of the bond and each of the coupons thereof; all this may be imitated with a pen, but the decision of the United States court has already decided that it would be an infringement of my patent.

Cross-Q. 34. Is that the best answer which you can give to my question?

A. It is, as I understand it.

Cross-Q. 35. Do you personally know of any overissue of bonds by the corporation of the city of New York?

179 A. I do not; but I do know that my invention would detect such overissue on the first presentation of any such bond.

Cross-Q. 36. Do you personally know of any forgery of the bonds or coupons of the corporation of the city of New York?

A. I do not, but I do of forgeries and overissues occurring in various issues of bonds; the New York corporation, to the same circumstances and emergencies of other corporations, unless they are protected by a plan or system to prevent such emergencies.

Cross-Q. 37. Do you personally know of any duplicate bonds or coupons issued by the corporation of the city of New York?

A. I do not; but I know of other corporations who have been subjected to loss and damage by duplicates, and I know that my system, which is being used by the corporation of the city of New York, protects them from loss by any such emergency.

Cross-Q. 38. Have you any personal knowledge of any mutilated bonds or coupons that have been issued by the city of New York?

A. I have not; but I am aware that my patented system is a safeguard from loss in case of such an emergency.

Cross-Q. 39. Upon what practical experience do you base your assumed value to the city of New York of the use of your system?

A. From having been familiar with the issuance of bonds and cancellation of them for the last twenty-five or thirty years, and from having been extensively engaged in the manufacture of bonds and coupons for the last twenty-five years—pertaining to engraving and lithographing thereof—supplying numerous corporations with bonds and coupons in blank.

Cross-Q. 40. That is all, is it?

180 A. Yes, sir.

Cross-Q. 41. Has any one ever paid you any royalty for the use of your invention?

A. There has not, but I certainly expect large damages from the corporation of New York in place of royalty and as a just remuneration for value received.

FRANCIS MUNSON.

Adjourned to ten o'clock a. m., July 8, 1881.

JULY 8—9 a. m.

Parties met pursuant to adjournment.
Present: As before.

AMOS T. HALL, being first duly sworn, testified on behalf of complainant:

Q. 1. What is your full name, residence, and occupation?
A. My name is Amos T. Hall; residence, Chicago, Illinois; occupation, treasurer of the Chicago, Burlington and Quincy railroad.
Q. 2. How long have you occupied that position?
A. Since the first of January, 1855.
Q. 3. Prior to 1855 were you connected with railroads; and, if so, how long?
A. The first of March, 1838, I commenced service with the Michigan Central railroad at Detroit; I left the service of that company in March, 1843; I then recommenced on the Chicago, Burlington and Quincy in July, 1854.
Q. 4. Have you been connected with other corporations, and please state the character of your occupation in connection with such business?
181 A. I was, as I stated, with the Michigan State Bank from 1847 to 1850, and from 1850 to 1854 I was auditor and comptroller of the city of Detroit.
Q. 5. Are you acquainted with "Munson's patent bond-canceling file," which is the one upon which this suit was brought?
A. I am.
Q. 6. Are you acquainted with Francis Munson, the complainant; and, if so, how long have you been acquainted with him and in what connection?
A. I know him as a manufacturer and seller of stationery of all kinds, blank books, &c., from about the middle of July, 1854, up to the present time; I have known him, and I think he was in the business up to the time of the great fire; I cannot state that positively.
Q. 7. From your acquaintance with the bond-canceling file in question and your experience as a financial officer are you able to state what, if any, advantages or benefits result from the use of said file? If yea, please state them.
A. I used the file in my office for quite a number of years. I cannot remember the year in which we commence using the files, but from my best recollection it must have been in 1856 or 1857 I had the first files made, but it might have been in 1857 or 1858; it was long before he got the patent that we used the files. Well, to answer that question fully I should have to go somewhat into detail with regard to the labor saved by the use of them. Prior to the use of this the coupons were filed *en masse;* would pay five hundred or a thousand; keep them all together in one package, and any question arising as to the non-payment of any of them or the loss of a coupon involved the labor of looking over the whole package care-

fully to ascertain if there were any coupons absent which
182 should have been paid. By the use of this file as soon as the coupons were paid they were pasted upon the file over the numbers in the blank to which they belonged, and by looking over the pages at a glance we could determine whether any coupons were still outstanding unpaid. Those questions came up very frequently with us.

Q. 8. Would your answer apply to cases of overissue, duplicating, counterfeiting, and the like?

(Objected to as leading.)

A. It would apply to duplicating and counterfeiting, and also to to overissue. If when the file is complete if an overissue was made it would be a duplicate, or else it would be in addition to the regular series; that you could detect very readily without the file—that is, if the number exceeded the regular issue.

Q. 9. When you first used the file was Mr. Munson still engaged in perfecting it?

(Objected to as incompetent.)

A. He was.

Q. 10. What, in your judgment, would be the advantage or benefit in money for the use of the plan in question?

A. The answer to that question is, of course, an estimate; in my opinion, the saving of labor of an accountant would amount to at least a half a dollar a bond.

Q. 11. Is that in the nature of a royalty?

(Objected to as leading.)

A. I suppose it might be called a royalty. I would like to
183 add something to that; this value is, in my opinion, the actual saving of labor to the accountant in charge of the bonds and coupons; in addition there is a value, but whether it can be estimated in dollars, the satisfaction of knowing that you are right, that there can be no possibility of mistake in examining the files.

Q. 12. In saying half dollar a bond, do you mean irrespective of the amount of the bonds?

(Objected to as leading.)

A. The number of dollars in the bond makes no difference, but the length of time which the bond is to run does, as for each additional year there would be two additional coupons. I fixed my estimate upon the average length of time that the bonds of the corporation with which I am connected have been made to run, some of them maturing in ten years, and then at various periods up to forty, the average being about twenty.

Q. 13. When does the value of which you speak commence in the use of the file?

A. The value commences with the construction of the file and its use.

Cross-examination by Mr. HYDE:

Cross-Q. 14. Does the Chicago, Burlington and Quincy railroad use Mr. Munson's patented method now?

A. It does not.

Cross-Q. 15. What method of filing its bonds and coupons does that corporation employ?

A. At certain periods, not fixed periods, but about once a year, the board of directors, by its committee on finance, examine the paid coupons and recommend their destruction by burning and placing upon the records of the company a statement of the
184 number of the various kinds of bonds and coupons that have been ordered to be destroyed on that day, and the coupons are then burned and the bonds, if there are any bonds, among them.

Cross-Q. 16. From the date of issue to the time of the examination of which you have spoken, are the paid coupons filed *en masse?*

A. They are filed away *en masse* in boxes.

Cross-Q. 17. When did you stop using Munson's patent system?

A. October, 1871, when the files were all destroyed by the great fire.

Cross-Q. 18. Have you ever used it since?

A. We have not.

Cross-Q. 19. Were the pages of the files which you used prior to 1871 printed upon the same plan as Exhibit A?

A. They were.

Cross-Q. 20. Did your company ever pay Mr. Munson any royalty for the use of those files?

A. It did not.

Cross-Q. 21. Upon what basis do you fix the sum of fifty cents per bond as an estimate of the saving of labor to the accountant in charge of the corpoaation bonds and coupons, and, in your opinion, is that saving of such a character that the accountant would pay that sum out of his salary?

A. My estimate was based upon the extra labor that was required in keeping the bonds and coupons in the old way, and the accountant maybe might not be willing to pay that out of his own salary, but I should be willing to pay it out of my salary sooner than use the old way. In talking about royalty where you procured the files from a manufacturer other than the inventor, then it would be proper to pay a royalty; in our case we purchased the files
185 from the inventor. I have no doubt that he was wise enough to put on a price that included his patent right.

Cross-Q. 22. Do you remember what you paid Mr. Munson for the files you used?

A. I do not.

Cross-Q. 23. In the case of the presentation of a forged coupon to your office, how do you detect the forgery?

A. By its face—the same as you detect counterfeit bills; that is the first thing. If there is anything suspicious about it we could examine these files.

Cross-Q. 24. Could you not detect the forgery without the use of these files?

A. Probably.

Cross-Q. 25. Could you not detect a duplicate without the use of these files?

A. If it was a perfect duplicate it might be paid without suspicion; unless there was something suspicious in its appearance we might not detect it.

Cross-Q. 26. Upon the presentation of a bond or coupon for payment to your company now is it not the custom to examine the files to determine whether or not it is a duplicate?

A. They do; if it is presented out of the usual course it would. The coupons all mature at a certain day in the half year, and if presented at maturity, at the place of payment prescribed, it would be paid unless there was something suspicious in its appearance.

Cross-Q. 27. At the time that you used these files was it not also the custom of your company to pay coupons presented in regular course without in each case examining the files of that bond?

A. Certainly.

186 Cross-Q. 28. In your opinion, is it not possible that errors might arise in the use of Munson's patent file through carelessness or inadvertence?

A. I think it is possible; we have not been able to employ a corps of angels; until we do there will be possibility of mistake; I think there is less liability to mistakes.

Cross-Q. 29. Is there anything, in your opinion, in Munson's patented system which could not be supplied by a written history or memorandum of each bond and its coupons?

A. I don't know that there is, but the labor would be very much greater to make the writing; any good accountant would far prefer paying the royalty rather than to write out the books; but it could be done in another way.

Cross-Q. 30. Then, if I understand you, the advantage of the use of Munson's file is one of convenience?

A. And saving of labor.

Cross-Q. 31. Does not the usefulness of Munson's files with regard to any one bond and its coupons practically cease with the life of that bond?

A. I think it does, and yet I think there may be cases where it would be useful after that; but practically it ceases.

Redirect examination by Mr. FULLER:

Redirect Q. 32. Under what circumstances was the use of Munson's file discontinued by the Chicago, Burlington and Quincy Company?

A. At the great fire our files were all destroyed—the great fire in October, 1871. Our system of paying coupons was then changed. The funds for paying bonds and coupons up to that time had been furnished directly by the treasurer. The change consisted in

187 furnishing the means for payment of these bonds and coupons by the assistant treasurer in Boston, and when paid the

bonds and coupons were forwarded to him for safe-keeping, and as the series of bonds outstanding and the accrued coupons had been paid in part and destroyed with the files the directors adopted the plan of burning the coupons after due examination by the finance committee.

Redirect Q. 33. Originally the payments were made by the treasurer in Chicago or from Chicago and the paid bonds or coupons returned to Chicago, but after the great fire the payments were made from Boston and the bonds and coupons taken up were deposited in Boston; is that it?

A. That is substantially what I have stated.

Redirect Q. 34. If you were now pursuing the same course as to paying bonds and coupons that obtained up to the great fire, that if the payments were made from here and the bonds and coupons paid were sent here, would you use Munson's file; and, if so, why?

(Objected to as incompetent and improper.)

A. I should, and for the reason that it is the best system that I know of. There may be a better one invented; then I should take that.

Redirect Q. 35. In your answer to cross-question 23 you say that you do not remember what the company paid Mr. Munson for the files you used. Is it not the fact that the company did pay for the use of the files in paying for the books?

A. Well, I can hardly answer that positively, but merely state what my supposition was; that it was like other inventions; that in paying for the books we paid the inventor for his invention.

188 Redirect Q. 36. You have stated that your files were destroyed in the great fire. Would a new set of files be of value to you in place of those destroyed by the fire; if yea, why?

A. They would not be of great value because only a portion of the bonds and coupons of any series could have been placed in the new files. It would be an imperfect record, because part of each series had been burned.

Redirect Q. 37. After the maturity of bonds are not the files of value? I put this question with reference to your answer to cross-question 31 in relation to the usefulness of the files ceasing with the life of the bond.

A. Well, they are of the same value as any old vouchers which are kept to show that payments are made to guard against new claims.

Redirect Q. 38. In the case of a file of a certain series of bonds might not the case occur of bonds or coupons of the series not having been cancelled or being outstanding; if yes, would not the Munson file be of value in such instances?

A. Yes; it would be a very great convenience and value to be able to refer to the files and discover whether the bonds were outstanding or not.

Redirect Q. 39. Does not the use of the Munson file, in your judg-

ment, reduce the chances of loss by forgery, counterfeits, duplication, and theft and increase the chances of detection?

A. I think they do.

Recross-examination by Mr. HYDE:

Recross-Q. 40. Under your present system are not the paid bonds and coupons forwarded from Boston to Chicago and there filed until they are burned by the finance committee?

189 A. No; they are retained by the assistant treasurer in Boston, in his custody.

Recross-Q. 41. And when paid they are filed in Boston in the boxes of which you have spoken?

A. Yes.

Recross-Q. 42. Where do the finance committee reside?

A. In Boston.

Recross-Q. 42½. Then, in effect, since 1871 your company has simply transferred its finance department to Boston?

A. In respect to bonds and coupons that is true.

Recross-Q. 43. When you purchased Mr. Munson's files from him do you know, as a matter of fact, that you paid him anything more than another stationer would have charged for the same books?

A. I don't know that we did; I might add that no other stationer knew how to make them.

Recross-Q. 44. Has a series of bonds filed in Mr. Munson's files when completed any other value than that possessed by any file of bonds and coupons when completed?

A. I don't know that it would have any more value than any file which was as convenient.

Recross-Q. 45. Would not the examination of any file of bonds reveal the fact whether or not there were any bonds or coupons still outstanding?

A. An examination ought to reveal the fact.

Recross-Q. 46. Is not the reduction of the chances of loss from theft by the use of Mr. Munson's files an advantage resulting to the owner alone?

A. I suppose that is so.

Recross-Q. 47. Does not the use of Mr. Munson's file involve the extra labor of pasting the bonds and coupons in the places designated for them?

190 A. It does, but that is trifling; the amount of that labor is not great; it is not much more than tying them up in bundles.

Redirect examination by Mr. FULLER:

Redirect Q. 48. For ready reference is not a file arranged in a book upon Munson's system more convenient than if the files were in bundles or boxes?

A. Yes; very greatly more convenient.

AMOS T. HALL.

FRANCIS MUNSON, recalled on behalf of the complainant, further examined by Mr. FULLER:

Q. 40. Since you signed your deposition yesterday, July 7, 1881, have you read it over?

A. I have, and desire to make additional testimony.

Q. 41. What, in your judgment, should the defendants pay you for your invention on the bonds and coupons actually filed in the registers? State and explain why you have desired your counsel to put this question.

A. Because I did not cover the whole ground in my previous testimony. On coupons which have been pasted in defendants' files, which have been detached from bonds and pasted in defendants' file, should pay a royalty of three cents each; coupons which have not been detached from bonds and have been pasted in defendants' files with the bond should pay one and a half cents each, and each and every bond placed in defendants' files should pay one dollar each.

Q. 42. Are the bonds and coupons which have been filed now open to the corporation for reference?

(Objected to, as the witness has not been shown to be qualified to answer the question.)

191 A. They are, and the city has the benefit of all notes and memoranda made therein, the same as before this suit was commenced.

Q. 43. Is there any benefit where the bonds and coupons have not been filed derivable from the registers; if yea, what?

A. There is, because upon the presentation of unpaid bonds and coupons which have matured and remain unpaid, upon presentation and reference to the files, the files would show a blank space establishing the facts in the case.

Q. 44. Name some of the corporations you have had dealings with.

A. Michigan Central railroad, Michigan Southern railroad, Illinois Central railroad, C., B. and Q. railroad, Chicago and Alton railroad—in fact, almost all the railroads in the Northwest; corporation of Cook county, and counties innumerable throughout the West and Northwest; also various city corporations and various stock companies innumerable.

Q. 45. When was your patent issued?

(Objected to, as the patent is the best evidence.)

A. April, 1867.

Q. 46. Describe the first books or files made for the C., B. and Q. Railroad Company prior to the issuance of your patent.

(Objected to as immaterial.)

A. The first books made for the Chicago, Burlington and Quincy railroad consisted of a scrap-book with the name of the corporation printed at the head with a plain blank page large enough to receive

the coupons, or a set of coupons, of a specified bond. During
192 a period from 1855 to 1866 I made many experiments in making books for the C., B. and Q. road, and in 1866 perfected the plan for which I secured a patent in 1867. The books made previous to 1866 were of crude and imperfect form.

Q. 47. How many bonds did you prepare your file for in any one series for that company?

(Objected to as immaterial.)

A. After perfecting my patented system I made but one set, which was for the C., B. and Q. road, to contain five thousand one-thousand-dollar bonds and the coupons thereof. The amount of the loan or principal of the same was five hundred thousand dollars.

Q. 48. What was the denomination of each bond?

A. One hundred dollars each. I add this as a correction to the answer immediately above.

FRANCIS MUNSON.

United States Circuit Court, Southern District of New York.

FRANCIS MUNSON

vs.

THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK and ANDREW H. GREEN, as Comptroller thereof.

To the Hon. William J. Wallace, circuit judge of the United States for the second circuit:

Whereas by a decretal order made and entered in the above-
193 entitled cause on the 15th day of June, 1881, it was referred to the undersigned as master *pro hac vice* to ascertain and take and report to the court an account of the gains, profits, and advantages which have arisen or accrued to the said mayor, aldermen, and commonalty of the city of New York or to the said Andrew H. Green, comptroller thereof, from the manufacture or use of the improvements described and claimed in the letters patent No. 63419, granted to the complainant April 2, 1867, for a new and useful improvement in filing and preserving bonds and coupons in registers or books, and to ascertain and report the damages which the complainant has sustained thereby:

Now, therefore, I, Stephen D. Law, the master *pro hac vice* named in said decretal order, do find and report as follows:

I. That I have been attended from time to time by the counsel for the respective parties and by the witnesses produced by them, and that I have considered the evidence produced and taken before me, all of which accompanies this my report.

II. That no evidence has been offered or put in by the complainant going to prove that he has been accustomed to make and sell to others for use books or registers constructed according to his invention, or that he has ever granted under his patent licenses to

others to make, use, and sell his invention, or that the complainant has suffered any special damage by reason of the use by the defendant of his invention, and that the evidence which has been put in by the respective parties has been wholly directed to the question of
194 the gains, profits, and advantages which have arisen or accrued to the defendants from the manufacture or use of the improvements or invention described in the complainant's patent.

III. The decree entered in this cause having established the validity of the complainant's patent and the infringement thereof by the defendants by the manufacture and use of the registers made and used by them, and the principle having been established by numerous decisions of the courts—Simpson *v.* Mad. Riv. R. R. Co., 6 McLean, 603; Poppenhusen *v.* Comb Co., 2 Fish., 62; Lehnbeuter *v.* Holthaus, U. S. Sup. C't, 1881, and others—that the use by a defendant of a patentee's invention is evidence of its utility and estops the user from denying such utility, the only question upon the evidence before me is what are the gains, profits, and advantages which have arisen or accrued to the defendants by their manufacture and use of the complainant's invention.

IV. To determine the bearing and effect of the testimony put in by the respective parties a determination of the nature and scope of the complainant's invention as set forth in his patent and covered by the claims thereof becomes necessary.

The invention of complainant, as set forth in his patent No. 63419, granted April 2, 1867, is declared to be for "certain new and
195 useful improvements in preserving, filing, and canceling bonds, coupons, certificates of stock," &c., and "consists in providing a book or other register with pages corresponding in size, style, and number with the bonds, coupons, certificates, &c., to be used, on which pages the said bonds, coupons, or other certificates, when paid, are pasted or otherwise attached and thus preserved and canceled."

The patent, after referring to the ordinary modes in use as to disposing of bonds and coupons when paid, filing them away or destroying them, and making mention of their frequent loss or theft, by which the community is defrauded more or less, then sets forth:

"To prevent this I have invented a system of preserving, filing, and canceling such documents, which system will not only prevent such fraudulent practices, but also present at all times a full and perfect history or record of all transactions in relation to each and all of said documents.

"To accomplish this I provide a book or set of books having each page printed or ruled to correspond in size and style with the bond and its coupons or other document, whatever it may be, with a heading showing the number, date when issued, when and where payable, amount, what issued for, rate of interest, and when and where payable, together with such other facts as may be necessary to form a perfect record of the document.

* * * * * * *

"When any of the coupons are presented and paid they
196 are canceled and then pasted or otherwise secured in their proper place upon the page, each place for them being numbered.

"When the bond itself is paid it is likewise attached in the place on the page provided for it. If the holder should by any means be dispossessed of one or more of the coupons or bonds, upon presentation of the proper evidence he could be paid; but not having the coupon or bond to surrender there would be entered in its place upon the page a record of the facts in the case, * * * so that if at any future time said coupon or bond should be presented for payment by a person not entitled to it the record of all the facts relating to it would be ready at hand and could be referred to at once by examining the proper page."

If there is a series of bonds the pages of the book are numbered to correspond with the several numbers of the series—

"So that if it is desired at any time to ascertain any fact in relation to any particular bond or its coupons it is only necessary to turn to the page having the same number.

* * * * * * *

"By this system, thus applied, the business community will be at once provided with a most convenient and perfect means of preserving, canceling, and filing bonds, coupons, certificates, &c., and with a history or record of all transactions relating thereto."

The claims are—

1. "The preserving, filing, and verifying bonds, coupons,
197 certificates, and all documents by the means and in the manner substantially as herein set forth."

2. "The book or register constructed and used as and for the purposes set forth."

The invention thus appears to be—

Not for a system, broadly considered, of preserving and filing away bonds and their coupons, &c., when paid;

Nor for a system of preserving and filing such bonds, coupons, &c., in books so that, after payment, they can be referred to and examined—

But for a particular and specific system of preserving and filing away in books or registers bonds and their coupons, &c., when they have been paid, and by which certain results or ends are attained—that is, in such a manner that each bond and the coupons belonging to it shall be, as they are paid, preserved and filed in connection with each other and separate and apart from every other bond and its coupons, so that the record of each and every bond and all facts relating thereto will be by itself distinct and apart from the record of any other bond and its coupons, so that, at any time, the status as to payment of any bond and its coupons can be determined by reference to a single record made in one place and without referring elsewhere or to the record of any other bond.

This, it is believed, is a fair interpretation and construction of the invention described and claimed in the complainant's patent, and this will be referred to and understood as the Munson system.

V. Evidence has been produced before me as to three sys-
198 tems of filing and preserving bonds and their coupons, when paid, which were known and used prior to the Munson system.

Two of these systems were well known prior to the complainant's invention, and are referred to and designated as—

The En-Masse System and the Warren System.

(*A.*) *The En-Masse System.*

According to this system the coupons of bonds, as they are paid, were put together and filed away in packages, generally of from 500 to 1,000.

Whether under their mode or system the coupons before being filed away were assorted in any way the evidence is not very definite, but it is generally to the effect that the coupons were put away in packages as they were paid, without assortment either as to loans, denomination, or any classification.

In the use of this system, if any question arose as to any particular coupon paid, the inquiry involved the necessity and labor of looking over the coupon package or packages until the particular coupon was found.

A variation of this system is shown to have been used and is still used in the United States Treasury Department in which the coupons, before being filed away in packages, were assorted:

1st. According to loans.

2d. According to denomination.

3d. According to date of maturity.

4th. According to the numerical order of the bonds, and then put in packages of 100 each, ten of such packages being confined together and then placed in boxes.

199 These packages were, however, made up subject to another order or management that the coupons paid by each sub-treasurer were packaged by themselves as vouchers in the accounts of such officers.

Under this form of this system any inquiry as to the coupons of any bond involved the necessity of referring to and examining these packages of 100 and 1,000, and if the coupons of any particular bond or series of bonds should be paid at one time by one sub-treasurer and at another time by another sub-treasurer the determination of the inquiry would involve the necessity of examining the vouchers of two or more of such officers.

Under the *en-masse* system the bonds, when paid, were not filed with the coupons, but were packaged separately and filed away by themselves or destroyed. The evidence does not show whether the bonds were assorted in any manner before they were filed away.

These systems of preserving and filing the coupons *en masse* and the bonds separate therefrom did not, it is very apparent, accomplish in and by itself the same purpose or attain the same result which is accomplished and attained by the Munson system.

(B.) The Warren System.

According to this system the coupons of bonds are preserved and filed away as they are paid by being pasted on the pages of books prepared for that purpose in the following manner: Coupons of the same payment are pasted in the book in the numerical order of the bonds to which they belong—that is, if there were fifty bonds, the coupons would be pasted in the book in the following order: 1st, coupon No. 1 of bond No. 1; 2d, coupon No. 1 of bond No. 2; 3d, coupon No. 1 of bond No. 3, and so on for the fifty bonds.

200 After all the coupons of the first payment have been pasted in—spaces for any coupon not presented being left to put in such coupons afterwards—then the coupons for the next payment would be placed in in like order—that is, 1st, coupon No. 2 of bond No. 1; 2d, coupon No. 2 of bond No. 2; 3d, coupon No. 2 of bond No. 3, and so on for the fifty bonds. In this manner all the coupons of the first payment in a series of bonds—that is, all coupons No. 1 follow each other, and then all the coupons of the second payment No. 2 followed each other, and so on in the same order. The paid coupons are thus arranged or filed away according to payments or dividends and not according to bonds.

When the bonds were for any reason surrendered, either by being paid or exchanged for other bonds, they were filed away by themselves separate from the coupons, but the evidence does not show whether the bonds were so filed away in numerical order or promiscuously.

This system furnishes a ready means of determining the gross amount or whole number of coupons paid at any and every payment, but, as in the case of the *en-masse* system, does not accomplish by and of itself the same purpose or attain the same result as is secured by the Munson system.

(C.) Evidence has also been put in on the part of the defendants as to another system of filing and preserving coupons, which was known and in use prior to complainant's invention, and which was used in the Treasury Department at Washington from 1842 to 1866 for preserving the coupons of the bonds issued under the loan of April 15, 1842, and which matured in 1863.

201 According to the testimony the coupons when paid were arranged in scrap-book form, each page of the book being ruled to provide for the coupons attached to a particular bond, the coupons for each particular bond being arranged on the same page and in the same order that they had when attached to the bonds.

The books were not made for the reception of bonds, and no bonds were ever put in them. The bonds were filed away separately from the coupons from time to time, and eventually destroyed.

The coupons were pasted in on every right-hand page, the left-hand page being left blank.

The blank pages were not used for any purpose or intended for any specific use or purpose, and for the purpose for which

the books were made and used the coupons might as well been pasted in on every page as on every other page.

The proof as to those books is general in its character, and does not go into details or particulars.

None of those books alleged to have so been used from 1842 to 1866 for holding coupons are now in existence, but all of them were destroyed in 1866, when the coupons were cut out and were arranged in numerical order and filed away in packages.

No witness was produced who had had anything to do with using these books or pasting the coupons in them, nor were any of the coupons which had been cut out of those books when they were destroyed produced before me.

The witness Hendrick, who testified as to the use of this system, is a clerk in the Register's office of the Treasury Department, and went into that department July 14, 1865, but did not have anything to do with taking care of and filing coupons until some five or six months after he went into the department. He did not per-
202 sonally have anything to do with putting in the coupons in the books referred to, and the only connection which it appears he had with those books was that they were destroyed under his supervision in 1866 and he cut out the coupons. The bonds, the coupons of which were put in those books, all matured about eighteen months before the witness went into the Treasury Department.

The knowledge of this witness as to the use of such books must necessarily, therefore, have been derived from others, except so far as obtained by him when superintending the destruction of those books and cutting out therefrom the coupons.

Giving his testimony a liberal construction, it shows that those books, as they were used, though like the Munson books in one respect or feature, did not include all the features of or embrace the whole of the Munson system, and that it was not intended in and by the use of such books to accomplish the same purpose or obtain the same results which are accomplished and attained by the Munson system.

It is urged that those books, as existing, were capable of a further or additional use than that for which they were made and actually used; that the bonds could have been placed on the blank pages opposite to their coupons, and that the books would then be exactly the same as those of Munson. The inquiry, however, before me, it is considered, is, how were those books actually used? and not how might they have been used. It is the system disclosed by such books as actually used that is to be regarded, and not that which might have existed had some additional use been made.

Taking into view the purpose for which such books were intended, the use that was made of them, and the result attained by
203 their use, it is considered that those books did not embody or disclose a system of filing and preserving bonds and coupons which was equivalent to that of Munson's, and did not accomplish a like purpose or attain a like result.

(D.) Evidence has also been given as to certain books used by the defendants, called "ticklers." These books, however, were only a tabular memoranda of all the times of the presentation for payment of coupons, and are not in any sense a system or mode of filing and preserving bonds and their coupons, and it is not understood that this character is claimed for them, nor do they appear to have been in use prior to the Munson patent or invention.

In the view above taken of the nature and scope of the Munson system and the end secured thereby and the character and nature of the several systems which were in use prior to the Munson system and the ends secured thereby, comparison cannot properly be made between the relative advantages of these several systems for the purpose of determining the value, if any, of the profits or advantages arising from the use of the Munson system.

It may well be that the system of filing and preserving coupons *en masse*, whether assorted according to loans, denomination, or numerical order of bonds or not so arranged, and filing the bonds separately from the coupons may, under some circumstances and conditions and for some purposes, be preferable to any other system, and the same may be true as to the Warren system; but such peculiar advantages of these systems do not detract from the value of the Munson system in accomplishing a specific purpose or attaining a specific result or show that there may not be a saving by the use of the Munson system over other systems in attaining such a result.

204 Comparison can only be made between the advantags of these systems in attaining the same result, and the enquiry is, what is the advantage, if any, in cost, time, convenience of use, &c., in attaining by the use of the Munson system the specific result or end secured by it over attaining the same result or accomplishing the same purpose by the other systems referred to? This advantage, if any, is the measure of profits.

Mowry *vs.* Whitney, 11 Wall., 620, 651.

The capability of the Munson system to show at a glance or by merely looking through the registers the status of any bond and its coupons as to payment thereof is proved by complainant's (Hall, int. 7, p. 142) and is also admitted by the defendants' witness, Carroll, (cross-int. 37, p. 53), who had used the Munson system as well as the Warren system.

It is also shown by the proofs that to obtain the same information as that furnished by the Munson system involved, under the *en-masse* system, the labor of looking over the package or packages of coupons (Hall, int. 7, p. 142), and the further labor of obtaining from another place the bond, if the bond was necessary, and under the Warren system was a matter of trouble and involved consumption of time (defendants' witness Donovan, int. 3, p. 75; see also Carroll, cross-int. 38, p. 54). This must also be so, to a greater or less degree, with respect to the system formerly and now in use in Treasury Department.

A saving of time and labor is thus secured by the use of the

Munson system over that which would be required to attain the same result in the use of the systems known and used prior to the invention of the Munson system.

Two witnesses have been examined on the part of the com-
205 plainant as to the value or measure of value of the advantage and benefits arising from the use of the Munson system. One is the complainant, who is a manufacturing stationer, but has had no practical experience in filing and preserving bonds and their coupons under his own or any other system. The opinion of this witness as to the value of the use of his invention is not founded upon any specific or definite facts or basis, and can but be considered so indefinite and conjectural as not to furnish a reliable standard of measurement.

The other witness, Hall, has had practical experience in the use of both of the *en-masse* system and the Munson system, and his opinion is derived from that experience and is based upon the extra labor required in keeping bonds and coupons according to the former system as compared with the Munson. In his opinion the advantage or benefit of the Munson system is at least half a dollar a bond, running for twenty years. (Hall, int. 10, 11, 12, page 144; cross, 21, page 140; cross, 29, 30, page 145.)

It is true this witness is not familiar with the business of the defendants and has never practically used the Warren system used by the defendants, but the proofs show, as before stated, that there is a saving of time and labor in the use of the Munson system, as compared with the Warren system, in attaining the same results, and the Munson system is of such a character that its benefit and advantage in attaining and securing the ends for which it is designed must be substantially the same whenever used.

The witness Hall is the only one of those examined, except the defendants' witness Carroll, who has been practically familiar with the use of the Munson system, and who has also practically used either of the other systems as to which evidence has been given.

206 The general purport of the testimony of the witness Carroll, it is true, is to the effect that the Munson system had been of no advantage to the defendants and had been the cause of extra charge and expense, but this statement is hardly reconcilable with the facts that the defendants, of their own choice, used the Munson system for many years, to a large extent, and continued such use until ordered by the court to cease such use. The witness Carroll also has been and now is in the employ of the defendants, and can, therefore, scarcely be considered as a wholly unbiased or impartial witness, or, at least, as much so as the witness Hall.

It being conceded that the Munson system is useful, and it being shown that by its use there is effected a saving of time and labor over other prior known systems in attaining a like result, I am of the opinion, upon consideration of all the testimony in the case, that the value of the Munson system as fixed by the witness Hall—fifty cents per bond, running for the term of twenty years, or two and a half cents per bond per year—is a reasonable measure of value for

the benefit and advantage derived from the use of the Munson system.

VI. The testimony shows that the defendants have made and used 119 books or registers embodying the complainant's invention; that such books were constructed to receive 29,922 bonds and their coupons; that in such books coupons were inserted belonging to each and all of said bonds; that in said books there have been inserted 4,904 bonds, with all the coupons belonging thereto, these bonds
207 having been canceled or surrendered for registered bonds, and as to which bonds and coupons the record was thus complete.

And that in connection with the remaining bonds, 25,018 in number (29,922, 4,904=25,018), there has been inserted in said books 422,308 coupons.

And that such books had been used by the defendants prior to the service of the injunction in this cause (no coupons or bond have been, according to the testimony, placed in them since the service of the injunction), computing the time from the numbers of coupons pasted in the books and counting two coupons to the year, the coupons being payable semi-annually for and during the following periods:

No. books.			Time used.	Canceled bonds.	Coupons of other bonds.
18—	(4,500	bonds)	9½ years,		85,500
85—	(21,244	")	8½ "	3,370 and	303,858
5—	(1,294	")	8 "	209 and	17,360
11—	(2,884	")	5 "	1,325 and	15,590
119	= 29,922			4,904	422,308

Calculating the benefit or advantage received by the defendants from their use of the Munson system at the rate or value of two and a half cents per bond per year, according to the time they have used the several books or registers made and used by them and the number of bonds inserted therein, the result is as follows:

4,500 bonds, at 2½ cts. per bond per year, for 9½ years, is	$1,068 75
21,244 bonds, at 2½ cts. per bond per year, for 8½ years, is	4,514 35
208 1,294 bonds, at 2½ cts. per bond per year, for 8 years, is	258 80
2,884 bonds, at 2½ cts. per bond per year, for 5 years, is	360 50
Total	$6,202 40

It is also insisted by the complainant, in respect to the 4,904 bonds, which, with their coupons, have been inserted by the defendants in the registers used by them, that the record of such bonds being complete and the registers open to the defendants for the purpose of reference, that the defendants should be charged at the rate fixed

upon for the use of such books, as to such bonds, since the decision and injunction in the case down to the expiration of the patent, April 24, 1885. No evidence, however, has been put in before me to show that the defendants have in any way, by reference or otherwise, or for any purpose used such books or registers since the decision in this cause and the service of the injunction therein. In the absence of such proof it cannot be assumed either that the defendants have used since the service of the injunction the registers containing such bonds or that they will hereinafter use the same.

The complainant further insists that interest from the time of the rendering the decree in this case should be allowed upon any sum which may be found against the defendants.

Under the decisions of the courts (Mowry *vs.* Whitney, 11 Wall., 620, and others) governing the allowance of interest upon recoveries in patent cases it is considered, however, that the present case is not one in which interest is chargeable against the defendants.

209 I therefore find and report that the gains, profits, and advantages that have arisen or accrued to the defendants, The Mayor, Aldermen, and Commonalty of the City of New York and the Comptroller thereof, from the manufacture and use of registers containing the improvements described and claimed in the letters patent No. 63419, granted April 2, 1867, amount to the sum of six thousand two hundred and two dollars and forty cents ($6,202.40).

I further find and report that the complainant, from the manufacture and use by the defendants of the registers embodying the Munson system, has sustained no damage, except merely nominal.

All of which is respectfully submitted.

Dated New York, September 22, 1882.

(Signed) S. D. LAW,
Master pro hac vice.

ABSTRACT OF EXHIBIT "STATEMENT NO. 1."

1.—*County Bonds, of* $500, *due* 1901.

Books.	No. bonds.	Coupons inserted.	Time of use.
36.	1 to 8,887=8,887	17.	8½ years.

2.—*County Bonds, of* $1,000, *due* 1901.

18.	1 to 4,445=4,445	17.	8½ "

3.—*City Bonds, of* $500, *due* 1901.

17.	1 to 4,284=4,284	17.	8½ "

4.—*City Bonds, of* $1,000, *due* 1901.

8.	1 to 2,128=2,128	17.	8½ "

210 5.—*Dock Bonds*, $500, *due* 1901.

Books.	No. bonds.	Coupons inserted.	Time of use.
4.	1 to 1,000=1,000	17.	8½ years.

6.—*Dock Bonds*, $1,000, *due* 1901.

2.	1 to 500=500	17.	8½ "

7.—*City Park Imp.*, $500, *due* 1902.

3.	1 to 862=862	16.	8 "

8.—*City Park Imp.*, $1,000, *due* 1902.

2.	1 to 432=432	16.	8 "

9.—*City*, $500, *due* 1896.

4.	1 to 1,000=1,000	10.	8 years.

10.—*City Imp.*, $1,000, *due* 1896.

3.	1 to 820=820	10.	5 years.

11.—*City*, $1,000, *due* 1896.

4.	1 to 1,064=1,064	10.	5 years.

12.—*Tax Relief*, $1,000, *due* 1890.

6.	1 to 1,500=1,500	19.	9½ years.

13.—*Tax Relief*, $500, *due* 1890.

12.	1,501 to 4,500=3,000	19.	9½ years.

Summary.

One and two, county bonds	13,332, 17	coupons each.
Three and four, city b'ds (1901)	6,412, 17	" "
Five and six, dock bonds	1,500, 17	" "
Nine, ten, and eleven, city and city imp. bonds	2,884, 10	" "
Seven and eight, city park imp. bonds	1,294, 16	" "
Twelve and thirteen, tax-relief bonds	4,500, 29	" "

211 SUMMARY EXHIBIT "STATEMENT 2."

Canceled Bonds.

County bonds	2,007
City " (1901)	1,163
Dock "	200
City and city imp. bonds (1896)	1,325
City park imp. "	209
	4,904

General Summary.

County	bonds,	13,332, canc'd, 2,007, 11,325; 17 coupons	$192,525
City	"	(1901), 6,412, canc'd, 1,163, 5,249; 17 coupons	89,233
Dock	"	1,500, canc'd, 200, 1,300; 17 coupons	22,100
City park imp.	"	1,294, canc'd, 209, 1,085; 16 coupons	17,360
City & city imp.	"	(1896), 2,884, canc'd, 1,325, 1,559; 10 coupons	15,590
Tax-relief	"	4,500, canc'd, 00, 4,500; 19 coupons	85,500
			$422,308

212 U. S. Circuit Court, Southern District of New York.

FRANCIS MUNSON *vs.* THE MAYOR, &c.

Exceptions by and on the part of The Mayor, Aldermen, and Commonalty of the City of New York and Andrew H. Green, as comptroller thereof, defendants herein, to the report of Stephen D. Law, master, to whom this cause was referred by an order entered at the April term of this court on June 15, 1881.

First. The said defendants except to the report of the master in so far as he finds and reports and adopts the construction of the Munson patent found and adopted by him, because the said construction is erroneous and opposed to the true meaning and intent of said patent.

Second. The said defendants further except to the report of the master, for that, though he finds in his report that certain books were used prior to the Munson patent in the Treasury Department in Washington, in which—

"The coupons, when paid, were arranged in scrap-book form, each page of the book being ruled to provide for ten coupons of a particular bond, the coupons for each particular bond being arranged on the same page and in the same order that they had when attached to the bonds;

213 "The books were not made for the reception of bonds, and no bonds were ever put in them; the bonds were filed away separately from the coupons from time to time and eventually destroyed. The coupons were pasted in on every right-hand page, the left-hand page being left blank," yet he fails to report that no profits, gains, or advantages were ever realized by the defendants or by any one else from pasting bonds on the left-hand pages of the similar books used by them.

Third. The defendants further except, for that the master erro-

neously says in his report that "the proof as to those books is general in its character and does not go into details or particulars," whereas he should not have so stated or reported, the fact being otherwise.

Fourth. The defendants further except, for that the master has erroneously stated in his report, when referring to the evidence of the complainant's witness, Hall, as follows:

"It is true this witness is not familiar with the business of the defendants, and has never practically used the Warren system used by the defendants, but the proofs show, as before stated, that there is a saving of time and labor in the use of the Munson system, as compared with the Warren system, in attaining the same results, and the Munson system is of such a character that its benefit and advantage in attaining and securing the ends for which it is designed must be substantially the same whenever used," whereas he should not have so stated or reported, the fact as to any alleged saving of time or labor by the Munson system being otherwise and the said system not being of substantially the same benefit or advantage whenever used.

214 Fifth. The defendants further except, for that the master, in referring to the evidence of the defendants' witness, Carroll, has erroneously and contrary to the fact stated as follows:

"This statement is hardly reconcilable with the facts that the defendants of their own choice used the Munson system for many years to a large extent and continued such use until ordered by the court to cease such use."

Sixth. The said defendants except to the finding and report of said master, for that he finds and reports that comparison cannot properly be made between the relative advantages of the several systems of filing bonds and coupons set forth in the proofs and the Munson system for the purpose of determining the value of the profits or advantages arising from the use of the Munson system, whereas the said master should have reported that the value of the Munson system is to be determined by a comparison between the advantages of that system and the best one of those of the other systems of filing bonds and coupons open to the defendants and severally described in his report.

Seventh. The defendants further except to said report of said master, for that he finds and reports that comparison can only be made between the advantages of the Munson system and those of other systems open to the defendants in attaining the same identical result—that is, the particular mode of preservation of bonds and coupons described by Munson, as defined by the master—and that this advantage is the measure of profits, whereas the said master should have reported that the measure of profits, if determin-

215 able at all from the use of the Munson system, is to be based upon a comparison of the pecuniary gains and advantages, if any, arising from the use of the Munson system over those arising from the use of other systems for accomplishing the same result—*i. e.*, the preservation of bonds and coupons thus open to the defendants.

Eighth. The defendants further except to said report, for that

said master erred in not finding and reporting that no proof sufficient in law had been offered by the complainant that the defendants had derived gains, advantages, or profits from the use of the Munson system at all or as compared with those which other systems open to them, and that proof to the contrary has been offered by the defendants.

Ninth. That said defendants further except to said report, for that said master erred in not reporting that the only proof offered of any advantage possessed by the Munson system over the advantages of other systems open to the defendants was one of possible occasional convenience of reference in particular cases and instances only, and that the proofs showed that the defendants had derived no benefit or advantage in any such cases or instances and had only referred to said books in a single instance, and that the proofs showed no method of computing the pecuniary value of such possible or occasional convenience or the value of the single instance of reference proved, and that the only evidence on behalf of the complainant was by way of estimate and conjecture and was not sufficient in law or tangible or certain.

Tenth. The said defendants further except to said report of said master for the reason that there is no sufficient or legal evidence whatever on which to base any report or finding of profits to
216 the defendants, and for the reason that the only evidence offered or taken before said master tending to the result reached in said report is wholly in the shape of estimate, assertion, conjecture, and opinion and affords no proper, sound, safe, or legal basis for any report of actual profits to the defendants.

Eleventh. The said defendants further except to said report of said master, in that if fifty cents per bond of twenty years be taken as the profits realized by the defendants said master finds and reports a profit of two (2) and one-half cents per year on each bond issued by the defendants, whereas he should not have found the same and should have reported no method of apportioning the same.

Twelfth. The said defendants further except to the report of said master, for that he finds and reports gains and advantages accruing to the defendants have been $6,202.40, whereas he should have reported that there have no pecuniary profits, gains, or advantages accrued to defendants, or that if such profits had arisen that there is no method of computing their value.

Thirteenth. The said defendants further except to the report of said master, because said master erred in overruling the several exceptions noted in the records of proceedings before him to the admission or rejection of evidence, whereas said master should have severally sustained said exceptions, and the defendants assign the said several rulings of the master as separate errors.

November 23, 1882.

BETTS, ATTERBURY & BETTS,
Defendants' Solicitors.
FREDERIC H. BETTS,
Of Counsel.

(Endorsed:) Circuit court of the United States, southern district of New York. Munson *vs.* The Mayor, &c. Exceptions to master's report. Betts, Atterbury & Betts, sol'rs for defendants, 120 Broadway, New York. U. S. circuit court. Filed Nov. 23, 1882. Joseph M. Deuel, clerk.

217 I.

U. S. Circuit Court, Southern District of New York.

FRANCIS MUNSON *vs.* THE MAYOR, &c., OF NEW YORK *et al.*

Please to take notice that at the time and place of the hearing of this cause upon the master's report and exceptions thereto, now noticed for the February term of this court (1883), we shall apply to the court upon all the record of evidence taken and admitted herein, and particularly upon the record of evidence (taken before the master herein) of Arthur Hendricks, in connection with the other evidence in this case, for an order setting aside the interlocutory decree herein, and for a reconsideration of this case and rehearing if necessary, and for such other and further relief as may be meet.

Yours, &c., BETTS, ATTERBURY & BETTS,
Defendants' Solicitors.

Feb. 13, 1883.

To Royal S. Crane, Esq., complainant's solicitor.

218 At a stated term of the circuit court of the United States held in and for the southern district of New York, at the court-house, in the city of New York, on the 27th day of March, 1883.

Present: Hon. Wm. J. Wallace, circuit judge.

FRANCIS MUNSON *vs.* THE MAYOR, &c., OF NEW YORK *et al.*

The hearing upon the master's report and exceptions coming on to be heard before his honor Judge Wallace, and the defendant also bringing on a motion to reconsider the interlocutory decree and for rehearing, and it appearing that this cause was heard at the time of taking the interlocutory decree by his honor Judge Wheeler, now, therefore, his honor Judge Wallace declines to hear such mo-
219 tion, and the same stands without prejudice to the right of the defendant to bring the same on before Judge Wheeler.

(Signed) WM. J. WALLACE.

(Endorsed:) U. S. C. C., S. D. N. Y. Munson *vs.* The Mayor, etc. U. S. circuit court. Filed Mar. 27, 1883. Timothy Griffith, clerk.

220 CITY & COUNTY OF NEW YORK, *ss:*

U. S. Circuit Court, Southern Dist. of New York.

FRANCIS MUNSON *vs.* THE MAYOR, &c., OF NEW YORK.

Royal S. Crane, being duly sworn, deposes and says that he is the attorney of the complainant herein and has been such since the commencement of this action; that the complainant, at the time of the commencement of this action, was and still is a resident of the city of Chicago, Illinois.

Deponent further says that after the proofs had all been taken herein for final hearing the defendants made a motion to be allowed to amend their answer herein and to have the right to have further testimony taken herein under the new allegations in said proposed amended answer, which motion was elaborately argued be-
221 fore Mr. Justice Blatchford and by him denied; that subsequently thereto, and after the accounting had been ordered herein, and after the taking of the testimony of Amos D. Hall, by deposition, in Chicago, to be used on behalf of the complainant on such accounting, the defendants again moved to amend their answer and to have a rehearing upon all the issues herein, which motion was based upon said deposition and an additional affidavit sworn to by said Hall; that said motion was elaborately argued before Mr. Justice Wheeler and by him denied.

Deponent further says that the present motion to have all the proceedings heretofore taken herein substantially set aside and to compel a rehearing upon all the issues herein would, at this late day, be, as deponent verily believes, an irreparable injury to the complainant; that this action was commenced on the 14th day of October, 1874, al-
222 most nine years ago, and that since that time the said Hall, the complainant's principal witness on the accounting, has died; that defendants' main witnesses, Carrol and Warren, have also died, and if the court should allow an amended answer to be served and a new trial to be had based upon allegations — recently discovered evidence, the complainant would not have the benefit of the direct or cross-examination of those witnesses upon the new issues herein, and that said three witnesses, now deceased, could and would undoubtedly give testimony upon any new hearing that would be material to the complainant, and that such witnesses have given about all the expert testimony which could be given on any hearing herein, they all having testified one way or another to the different methods that have been used in pasting matured bonds and coupons in registers, and deponent verily believes, from the
223 extended research he has made upon that subject, that no other witnesses can be produced who know anything upon the subject, except perhaps the new witness, Hendricks, and he only knows the same from hearsay, he never having personally used the Government registers for that purpose, but only had seen them after they had been so used by others.

Deponent further says that upon the motion which was decided by Judge Wheeler the question of prior use was the only point upon which the defendants sought to amend their answer and to be allowed to give testimony. The same question is now again sought to be relitigated on this motion. Deponent further says that the said witness, Hendricks, testified before Mr. Law on the accounting, as will appear upon pages 58 and 64 of the printed proceedings before the said master, on the 16th and 17th days of March, 1882, or about eleven months before this motion was made, and that since
224 such testimony of such Hendricks has been taken deponent has spent a great deal of time in preparing an elaborate argument upon the accounting, and a like argument has also been prepared and submitted by deponent's solicitors; that the defendants had ample time to make this motion between March 17th, 1882, the date of the giving said testimony by said Hendricks, and September 22nd, 1882, or a period of over six months, but they declined to do so.

(S'g'd) ROYAL S. CRANE.

Sworn to before me this 24th day of February, 1883.

(S'g'd) ALLAN LEE SMIDT,
Notary Public, N. Y. Co.

(Endorsed:) U. S. circuit court. Francis Munson ag'st The Mayor, etc., of N. Y. Aff't of compl't's soli. in opposition to def'ts' motion to reopen case. Royal S. Crane, compl't's soli., 26 Broad St., N. Y. city. This may be filed as of March 27th, 1883. F. H. Betts, counsel for def'ts. Filed March 27, 1883, pursuant to above con-
225 sent. T. G., clerk.

226 Circuit Court of the United States, Southern District of New York. In Equity.

FRANCIS MUNSON
vs.
THE MAYOR, ETC., OF THE CITY OF NEW YORK AND THE COMPTROLLER THEREOF.

It is hereby stipulated that for the purpose of appeal it is to be considered that the motion to reconsider the interlocutory decree and for a hearing, as to which the order filed herein March 27th, 1883, relates, and a copy of which order forms a portion of this record, was duly heard and denied by his honor Judge Hoyt H. Wheeler.

Dated New York, October 3, 1884.

(S'g'd) ROYAL S. CRANE,
Compl't's Att'y.

(S'g'd) W. C. WHITNEY,
Def'ts' Soli.

By FREDERIC H. BETTS,
Counsel.

227 (Endorsed:) U. S. circuit court. Filed Oct. 8, 1884. Timothy Griffith, clerk.

228 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on the — day of June, in the year of our Lord one thousand eight hundred and eighty-three.

Present: The Honorable William J. Wallace, circuit judge.

FRANCIS MUNSON

vs.

THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK AND THE COMPTROLLER THEREOF.

The above-entitled cause coming on this day for hearing upon exceptions filed to the master's report therein—

Mr. Frederic H. Betts is heard in behalf of defendants and in support of exceptions.

Mr. Royal A. Crane is heard in behalf of complainant and in favor of confirmation of master's report.

Mr. Luther R. Marsh is heard in behalf of complainant.

C. A. V.

229 Circuit Court of the United States, Southern District of New York. In Equity.

FRANCIS MUNSON

vs.

THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK AND THE COMPTROLLER THEREOF.

As stated by the master, the evidence upon the accounting before him was wholly directed to the question of the gains, profits, and advantages which have accrued to the defendants by the use of the invention secured by his patent to the complainant. The master finds that the gains and profits for which the defendants are liable are such as arise from a saving of time and labor by the use of the complainant's bond register beyond that which could have been obtained by the use of the several systems of registration open to them to use. He finds this saving to be equal to two and
230 a half cents per bond per year, and, at this rate, that the total profits derived by defendants up to the time of the accounting, and for which they are liable to the complainant, is the sum of $6,202.40. The defendants have filed exceptions to this finding, which bring up the whole question of the liability of the defendant for profits.

The complainant's patent is for "the preserving, filing, and verifying of bonds, coupons, certificates, and all similar documents by the means and in the manner" substantially as described in the specification. The means or system consists in the employment of a book for the registration of bonds and coupons after they are paid. Each

page of the book is adapted, by printing and ruling, to present the paid bond and coupons in their original order of annexation. Spaces are ruled for the bond and for the coupons, and the spaces for the letter are numbered in the inverse order of the time of maturity. When a coupon is paid it is pasted over the
231 ruled space designated for that particular coupon. When all have been paid, and the bond is paid, and each is pasted over the space designated for it, the page presents the bond and coupons in their original order. If a given coupon has not been paid the blank space indicates at once which coupon is missing. The object of the invention is to preserve and present a record of a bond or series of bonds and coupons which can be readily referred to in order to ascertain which have been paid and which have not been paid and the relative times of payment of each. The defendants employed 119 of these registers, constructed for the registry of nearly 30,000 bonds and a vast number of coupons. Obviously the defendants regarded this system of registration as convenient and as possessing advantages which commended it to them, and it is to be assumed that some benefit must have accrued from its use. The question is, however, whether the defendants derived any pecu-
232 niary profits or advantage from the use of the registers, so far as has been made to appear by the evidence before the master.

Several other methods of preserving and filing paid bonds and coupons were open to the use of the public, and the defendants are liable only for the pecuniary advantages which accrued to them by the use of the complainant's system beyond that which would have resulted from the use of the other systems which they had the right to employ in attaining the same ends. These pecuniary advantages as found by the master consist in economy of time and labor. If there was no saving of time and labor resulting from the use of the complainant's system there were no profits. Whether there was such a saving is the precise question of fact to be determined upon the proofs. In determining this question it is well at the start to disincumber the case of the testimony which bears upon the theory that the complainant's system provides a more effectual safeguard against loss from the overpayment of coupons
233 than is secured by the use of the other systems. There was a good deal of speculative assertion to this effect in the testimony of the witnesses. The theory may be true; but, conceding it to be so, the complainant did not prove or attempt to prove the pecuniary advantages arising therefrom, and from the nature of the case it would seem impossible to show this unless some data can be obtained as to the percentage of loss that arises from the overpayment of coupons by the municipalities or corporations that issue such obligations. Until this can be shown the first factor in the problem is wanting. The master properly limited his inquiry to the question of the comparative economy of time and labor in the use of the several systems.

The system of filing away and preserving paid bonds and coupons most commonly used was the "*en-masse*" method, so called, by

which they were filed away in packages, with or without classi-
234 fication. Another system in general use was the "Warren"
system. This was used by the defendants for the preservation of many of their issues of bonds and coupons. This method consisted of the use of blank books with spaces ruled on their pages for coupons, in which all the coupons of a series of bonds of the same date of maturity are pasted on a given page in the numerical order of the bonds. If any coupon is not paid the space designed for it is left vacant. When the bonds were surrendered or paid they were filed away by themselves.

There was also the system in use in the Treasury Department of the United States. There books were used upon each right-hand page of which were ruled spaces for coupons, and the coupons of a given bond, when paid, were pasted on such page in the order in which they would appear as originally attached to the bond. The blank spaces assigned for a particular coupon would indicate that such coupon had not been paid. When the bond was paid it could be
pasted on the left-hand page opposite the page for the coupons
235 of that bond; but in practice this was not done, but the bonds
when paid were destroyed. If there was a saving of time and labor by the use of the complainant's system it arose in one or both of two ways. A certain outlay of time and labor was expended under each of the several systems in filing away or registering the bonds and coupons. A further outlay of time and labor was required after this in ascertaining whether a given bond or coupon had been paid or not whenever occasion for investigation arose. The proofs are destitute of evidence to show what the expense of this outlay is under any system. This may have arisen, and probably did, from the intrinsic difficulty of making any such proof. It may very well be conjectured that a clerical force would be needed by a corporation which has issued a great number of bonds of different series, and that a less force could do the work under one system than under another;
but conjecture does not supply the place of evidence and will
236 not satisfy the law. The complainant's case fails to present
the necessary elements of comparison by which the amount of pecuniary advantage can be ascertained.

The master reached his finding upon the testimony of Mr. Hall, a witness who had been the treasurer of a railroad corporation and had used the complainant's system. Prior to using this system he had been accustomed to file away the coupons in packages. He testified that under the *en-masse* system if a question arose as to the payment of a coupon it was necessary to examine a package, whereas by the complainant's system as soon as the coupons were paid they were pasted in the proper blanks, and if a question arose as to the payment of a coupon it could be determined by a glance at the proper page. He was then asked, "What, in your judgment, would be the advantage or benefit in money for the use of the plan in question?" He answered, "The answer to that question is, of course, an estimate.
In my opinion the saving of labor in an accountant would
237 amount to at least half a dollar on a bond. The number of
dollars in the bond makes no difference, but the length of

time which the bond is to run does, as for each additional year there would be two additional coupons. I fix my estimate on the average of 20 years." This was not only a merely arbitrary estimate, but it was based upon a comparison between the complainant's system and the method which most remotely approximated to that system of all those which the defendant had a right to employ. The defendant actually employed the "Warren" system contemporaneously with the complainant's. As is fairly contended for the defendant, it is obvious that under the Munson system whenever coupons mature every page of every book of the series must be separately resorted to for the purpose of pasting in a separate coupon in its appropriate place. If 10,000 coupons are paid on a given day 10,000 separate pages must be resorted to and a coupon pasted in each
238 page in its proper place. Under the "Warren" system only a few pages would have to be resorted to. This one consideration of utility and convenience in the ordinary and necessary handling of the books at every date of maturity of coupons outweighs any that can be imagined in case of special instances when reference to particular coupons may be desired.

Irrespective of the fallacious standard of comparison adopted by Mr. Hall and accepted by the master, the opinion expressed by Mr. Hall was not founded on any specific or definite basis of fact. Under any system of registration the expense would depend upon the number of bonds and coupons to be registered. One employé might do the required work for one corporation, while many might be required by another corporation. One corporation might be served at a small expense, while another might be required to incur a large expense. The system that might be less expensive and more convenient with some corpora-
239 tions might be found more expensive and less convenient in others. The experience of a witness in the use of the several systems by one corporation which might enable him to speak intelligently as to their relative economical merits there would be of no practical assistance in enabling him to decide as to the relative economy of their use by another corporation. The inquiry here was to ascertain not what profits the defendants could have obtained by using the complainant's system in the most advantageous way or under ordinary circumstances, but what they did actually derive by its use as they used it. There was no evidence before the master by which that inquiry could be satisfactorily answered.

The exceptions are sustained.

Royal S. Crane and Luther R. Marsh, for complainant; Betts, Atterbury & Betts, for defendant.

240 (Endorsed:) U. S. circuit court, southern district of New York. Francis Munson *vs.* The Mayor, etc., of the City of New York. Decision. Wallace, cir. J. U. S. circuit court. Filed May —, 1883.

241 *Affidavit of Service.*

STATE OF NEW YORK, }
City and County of New York, } ss:

U. S. Circuit Court, South. Dist. of New York.

FRANCIS MUNSON

vs.

THE MAYOR, &C., OF THE CITY OF NEW YORK.

Harry E. Leibold, of the city and county of New York, being duly sworn, says that on the 9th day of January, in the year one thousand eight hundred and eighty-four, he served a copy of the annexed final decree on Royal S. Crane, Esq., at his office, in above action by delivering the same to him personally.

(Signed) HARRY E. LEIBOLD.

Sworn to before me this 9th day of January, 1884.

[NOTARIAL SEAL.] (S'g'd) JOSEPH H. MARION,
Notary Public, N. Y.

242 At a stated term of the circuit court of the United States, in the second circuit, held at the United States court-rooms, in the city of New York, on the 3rd day of January, 1884.

Present: Hon. Hoyt H. Wheeler, judge.

FRANCIS MUNSON

vs.

THE MAYOR, &C., OF THE CITY OF NEW YORK.

This cause having come on to be heard upon the pleadings, proceedings, and proofs at the October term, 1879, before the Hon. Hoyt H. Wheeler, judge, and an interlocutory decree having been granted on the 15th day of June, 1880, adjudging the letters patent
243 granted to the complainant on the 2nd day of April, 1867, No. 63419, to be good and valid in law, and granting an injunction against the defendants, and referring the cause to a master to take an account of the damages and profits, and the master having reported $6,202.40 *dollars* in favor of complainants, and the cause having come on again to be heard upon the master's report and exceptions thereto, in June, 1883, before the Hon. William J. Wallace, and an order having been granted in said June, 1883, overruling said master's report and awarding to the complainant the sum of six cents damages, and ordering that the costs and disbursements up to the interlocutory decree be taxed and awarded to the complainant, and the costs and disbursements of the proceedings before the mas-
244 ter and on his report and upon the exceptions and hearing thereon be awarded to the defendants and taxed and charged

upon the complainant, and that the master's fees, when adjusted, be charged upon and paid by the complainant, and that the costs and disbursements awarded to the one party be offset against the other, and that a decree be rendered for the difference for the party in whose favor it shall exist, and the costs and disbursements of the complainant having been taxed at the sum of $245.75, and the costs and disbursements of the defendants having been taxed at the sum of $169.30, now, it is ordered, adjudged, and decreed that the complainant do recover of the defendants the sum of six cents damages and the sum of seventy-six dollars and twenty-five cents costs,
245 being in all the sum of seventy-six dollars and thirty-one cents, and that he have execution therefor.

(Signed) WM. J. WALLACE.

(Endorsed:) U. S. circuit court, southern district of New York. Francis Munson *vs.* The Mayor, &c., of the City of New York. Final decree. Betts, Atterbury & Betts, solicitors for def'ts. Filed in open court Jan'y 11, 1884.

Please to take notice that the within proposed decree will be presented to this court for settlement and signature at the court-house, in the city of New York, on the 11th day of January, 1884, at 11 a. m.

BETTS, ATTERBURY & BETTS,
Def'ts' Sol'rs.

246 Circuit Court of the United States for the Southern District of New York. In Equity.

FRANCIS MUNSON

vs.

THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK AND THE COMPTROLLER THEREOF.

We hereby consent that the foregoing papers shall constitute the record to be sent to the Supreme Court of the United States by the clerk of this court on the appeal to said Supreme Court in the above-entitled cause without prejudice to any motion to correct the record hereafter.

(S'g'd) ROYAL S. CRANE,
Compl't's Att'y.
W. C. WHITNEY,
Def'ts' Sol'r,
By F. H. BETTS, *Counsel.*

(Endorsed:) U. S. circuit court. Filed Oct. 8, 1884. Timothy Griffith, clerk.

247 Circuit Court of the United States for the Southern District of New York. In Equity.

FRANCIS MUNSON

vs.

THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK AND THE COMPTROLLER THEREOF.

It is hereby stipulated that the book exhibits in evidence in the above suit may at the time of hearing on appeal be sent by the clerk of this court to the clerk of the Supreme Court of the United States for use on the hearing on appeal in said Supreme Court.

Dated New York, Oct. 3, 1884.

(S'g'd) ROYAL S. CRANE,
Compl't's Att'y.

(S'g'd) W. C. WHITNEY, *Compl't's Sol'r.*

(S'g'd) FREDERIC H. BETTS, *Counsel.*

248 (Endorsed:) U. S. circuit court. Filed Oct. 8, 1884. Timothy Griffith, clerk.

249 STATE OF NEW YORK, *City and County of New York,* } *ss:*

U. S. Circuit Court.

FRANCIS MUNSON

vs.

THE MAYOR, &C., OF THE CITY OF NEW YORK.

Harry E. Leibold, of the city and county of New York, being duly sworn, says that on the third day of April, in the year one thousand eight hundred and eighty-four, he served a copy of the annexed appeal on Royal S. Crane, Esq., at his office, No. 26 Broad street, in the city of New York, by delivering the same to him personally.

HARRY E. LEIBOLD.

Sworn to before me this fifth day of April, 1884.

(S'g'd) JOSEPH H. MARVIN,
Notary Public, N. Y.

250 Circuit Court of the United States, Southern District of New York.

FRANCIS MUNSON

vs.

THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK.

To the honorable the Supreme Court of the United States:

The appeal of the defendants, The Mayor, Aldermen, and Commonalty of the City of New York and the Comptroller thereof, the above-named defendants and appellants, respectfully showeth that upon or about the 14th day of October, 1874, the above-named complainant filed his bill in the circuit court of the United States for the southern district of New York against the above-named defendants, respondents in a suit in equity, to enjoin and

251 restrain the said defendants from infringing certain letters patent granted to said complainant on the 2nd day of April, 1867, and numbered 63419, and of which letters patent said above-named complainant was alleged to be the owner, and praying for an injunction against said defendants, and an accounting and payment by the said defendants of the profits realized and of the damages suffered by said complainant by reason of said alleged infringement of said letters patent, and that a *subpœna ad respondendum* issue out of and under the seal of said circuit court; that said defendants filed their answer to said bill of complaint and denied any infringement, and alleging prior use and sale, prior invention, abandonment, and acquiescence.

252 And that thereupon the complainant filed his replication thereto, and that issue thus being joined, such proceedings were had that subsequently and on the 15th day of June, 1880, an interlocutory decree was entered decreeing that said letters patent were good and valid in law and granting an injunction and an accounting of damages and profits.

Said cause came on subsequently to be heard on the master's report and exceptions, and in June, 1883, an order was granted overruling said master's report and awarding six cents damages to the complainant and his costs up to the time of the interlocutory decree and awarding to the defendants their costs on the proceedings before the master and hearing on master's report and exceptions.

253 Said costs were duly taxed, and on the 3rd day of January, 1883, a final decree was duly entered in said cause, decreeing to the complainant the sum of seventy-six dollars and thirty-one cents damages, and costs. Wherefore these appellants appeal from so much of the decree as sustains the validity of said letters patent and decrees that the defendants have infringed the same and grants an injunction and an accounting of damages and profits and from all orders and action taken in said matter upon which such portion of said decree

was founded, and respectfully pray that the decree of the said circuit court and the bill, answer, pleadings, depositions, evidence, orders, and proceedings in the said cause may be sent to the Supreme
254 Court of the United States without delay, and that the said Supreme Court will proceed to hear the said case anew, and that the said decree of the circuit court may be reversed so far as appealed from and a decree made deciding that these defendants and appellants have not infringed said letters patent and that said letters patent are invalid, and for such other and further relief as to this honorable Supreme Court shall seem just.

New York, January 3rd, 1883.

(S'g'd) THE MAYOR, ALDERMEN, & COMMONALTY OF THE CITY OF NEW YORK,
S. HASTINGS GRANT, *Comptroller.*
S. HASTINGS GRANT, *Comptroller.*

(S'g'd) BETTS, ATTERBURY & BETTS,
Def'ts' Solicitors.

(S'g'd) FREDERIC H. BETTS,
Of Counsel.

255 The above appeal is allowed.
January 3, 1884.

(S'g'd) HOYT H. WHEELER.

(Endorsed:) U. S. circuit court, southern district of New York. Francis Munson *vs.* The Mayor, etc., of the City of New York. Appeal. Betts, Atterbury & Betts, solicitors for defendants & appellants, 120 Broadway, New York. Due and timely service of a copy of the within appeal is hereby admitted this 3rd day of April, 1884. —— ——, compl't's sol'r. U. S. circuit court. Filed Apr. 24, 1884. Timothy Griffith, clerk.

256 *Bond for Damages and Costs.*

Circuit Court of the United States of America for the Southern District of New York, in Second Circuit.

FRANCIS MUNSON

vs.

THE MAYOR, ETC., OF THE CITY OF NEW YORK.

Know all men by these presents that we, John D. Crimmins and Dan. B. Smith are held and firmly bound unto the above-named complainant, Francis Munson, in the sum of five hundred dollars, to be paid to the said complainant; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the 3rd

day of January, in the year of our Lord one thousand eight hundred and eighty-four. Whereas the above-named defendants have prosecuted their appeal to the Supreme Court of the United States to reverse the final decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named defendants shall prosecute their appeal to effect and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOHN D. CRIMMINS. [L. S.]
DAN. B. SMITH. [L. S.]

Sealed and delivered and taken and acknowledged this 3rd day of January, 1884, before me—

S. HASTINGS GRANT,
Notary Public, City and County of New York.

257 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

John D. Crimmins, being duly sworn, doth depose and say that he is a householder in the city of New York; that he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

JOHN D. CRIMMINS.

Sworn to this 4th day of January, A. D. 1883, before me—
JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

(Endorsed:) Vol. —, page —. U. S. circuit court. Francis Munson *vs.* The Mayor, &c. Bond for costs on ——. —— ——, proctor. The within bond is approved. Jan. 3rd, 1884. (S'g'd) Hoyt H. Wheeler. U. S. circuit court. Filed Mar. 29, 1884. Timothy Griffith, clerk.

258 *Affidavit of Service.*

STATE OF NEW YORK, } ss:
City and County of New York, }

U. S. Supreme Court.

FRANCIS MUNSON

vs.

THE MAYOR, &C., OF THE CITY OF NEW YORK.

Harry E. Leibold, of the city and county of New York, being duly sworn, says that on the third day of April, in the year one thousand

eight hundred and eighty-four, he served a copy of the annexed citation on Royal S. Crane, Esq., at his office, No. 26 Broad street, in the city of New York, by delivering the same to him personally.

(S'g'd) HARRY E. LEIBOLD.

Sworn to before me this 5th day of April, 1884.

(S'g'd) JOSEPH H. MARVIN,
Notary Public, Kings Co.

Cert. in N. Y. Co.

259 UNITED STATES OF AMERICA, *ss*:

To Francis Munson, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October, eighteen hundred and eighty-four, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Francis Munson is complainant and appellee and The Mayor, Aldermen, and Commonalty of the City of New York and the Comptroller thereof are defendants and appellants, to show cause, if any there be, why the decree and interlocutory decree in
260 said cause mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Dated March 28, 1884.

(Signed) HOYT H. WHEELER.

(Endorsed:) U. S. Supreme Court. Francis Munson against The Mayor, &c., of the City of New York. Citation. Betts, Atterbury & Betts, def'ts' sol'rs. Due and timely service of a copy of the within citation is hereby admitted this 3rd day of April, 1884. ——, compl't's sol'r. U. S. circuit court. Filed Apr. 24, 1884. Timothy Griffith, clerk.

261 Circuit Court of the United States, Southern District of New York.

FRANCIS MUNSON

against

THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF NEW YORK AND THE COMPTROLLER THEREOF.

To the honorable the Supreme Court of the United States:

The appeal of the plaintiff, Francis Munson, respectfully showeth that upon or about the 14th day of October, 1874, the complainant filed his bill in the circuit court of the United States for the southern district of New York against the above-named defendants in a suit in equity to enjoin and restrain the said defendants from infringing certain letters patent granted to said complainant on the 2nd day of

April, 1867, and numbered 63419, and of which letters patent
262 said complainant was the owner, and praying for an injunction against said defendants and an accounting and payment by the said defendants of the profits realized by said defendants and of the damages suffered by said complainant by reason of said alleged infringement of said letters patent, and that a subpœna *ad respondendum* issue out of and under the seal of said circuit court.

That said defendants filed their answer to said bill of complaint and denied any infringement and alleging prior use and sale and prior invention, abandonment, and acquiescence; and that thereupon the said complainant filed his replication thereto and that, issue thus being joined, such proceedings were had that subsequently and on the 15th day of June, 1880, an interlocutory decree was entered decreeing that said letters patent were good and valid in law
263 and granting an injunction and an accounting of damages and profits.

Said cause came on subsequently to be heard on the master's report and exceptions, and in June, 1883, an order was granted overruling said master's report and awarding six cents damages to the complainant and his costs up to the time of the interlocutory decree and awarding to the defendants their costs on the proceedings before the master and hearing on the master's report and exceptions.

Said costs were duly taxed, and on the 3rd day of January, 1884, a final decree was duly entered in said cause decreeing to the complainant the sum of seventy-six dollars and thirty-one cents damages and costs.

Wherefore this complainant appeals from so much of the decree as overrules the master's report herein and awards six cents damages to the complainant and from all orders and action taken in said matter upon which such portion of said decree was
264 founded, and respectfully prays that the decree of said circuit court, and the bill, answer, pleadings, depositions, evidence, orders, and proceedings in the said cause may be sent to the Supreme court of the United States without delay, and that the said Supreme Court will proceed to hear the said case anew, and that the said decree of the circuit court may be reversed so far as appealed from and a decree made confirming and sustaining the report of said master in all respects, and for such other and further relief as to this honorable court shall seem just.

New York, September 16th, 1884.

(Signed) FRANCIS MUNSON.

(Endorsed:) U. S. circuit court. Francis Munson ag'st the Mayor, Aldermen, etc. Petition for appeal. Royal S. Crane, sol'r for pl'ff and appellant, 26 Broad St., New York city. Within peti-
265 tion allowed. N. Y. Sept. 18, 1884. (S'g'd) Wm. J. Wallace. Service admitted. (S'g'd) Betts, Atterbury & Betts. U. S. circuit court. Filed September 22, 1884. Timothy Griffith, clerk.

266 *Bond for Damages and Costs.*

Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

FRANCIS MUNSON, Complainant and Appellant,

vs.

THE MAYOR, ALDERMEN, AND COMMONALTY OF THE CITY OF New York, and the Comptroller thereof, Defendants and Appellees.

Know all men by these presents that we, Eddy T. Thomas and Royal S. Crane, both of the city, county, and State of New York, are held and firmly bound unto the above defendants and appellees in the sum of two hundred and fifty dollars, to be paid to the said defendants and appellees; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the eighteenth day of September, in the year of our Lord one thousand eight hundred and eighty-four.

Whereas the above-named Francis Munson has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named Francis Munson shall prosecute said appeal to effect and answer all damages and costs if said Francis Munson fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

(S'g'd) ROYAL S. CRANE.
(S'g'd) EDDY T. THOMAS.

Sealed and delivered and taken and acknowledged this 18th day of September, 1884, before me—

(S'g'd) R. N. LUSH,
Notary Public, N. Y. County.

267 (Endorsed:) Vol. —, page —. U. S. circuit court. Francis Munson *vs.* The Mayor, etc. Bond for costs on —. ——, proctor. Within bond approved as to form and sufficiency of sureties. N. Y., Sept. 18, 1884. (S'g'd) Wm. J. Wallace. Filed this — day of ——, 18—. U. S. circuit court. Filed Sep. 22, 1884. Timothy Griffith, clerk.

UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

Eddy T. Thomas and Royal S. Crane, each being duly sworn, deposes and says, and each for himself says, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

(S'g'd) EDDY T. THOMAS.
(S'g'd) ROYAL S. CRANE.

Sworn to this 18th day of September, A. D. 1884, before me—
(S'g'd) R. N. LUSH,
Notary Public, N. Y. County.

268 UNITED STATES OF AMERICA, *ss:*

To the Mayor, Aldermen, and Commonalty of the City of New York and the Comptroller thereof, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the second Monday of October, eighteen hundred and eighty-four, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Francis Munson is complainant and appellant and The Mayor, Aldermen, and Commonalty of the City of New York and the Comptroller thereof are defendants and appellees, to show cause, if any there be, why the decree in said cause should not be corrected and speedy justice should not be done to the parties in that behalf.

Dated September 18th, 1884.

269 (Signed) WM. J. WALLACE.

(Endorsed:) U. S. circuit court. Francis Munson ag'st The Mayor, Aldermen, &c. Citation on appeal. Royal S. Crane, pl'ff & app'l't's att'y, 26 Broad St., New York city. Service of a copy of the within citation is hereby admitted this 19th day of September, 1884. Betts, Atterbury & Betts, sol'ts for def't-. U. S. circuit court. Filed Sept. 22, 1884. Timothy Griffith, clerk.

270 UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from number one to number two hundred and sixty-nine, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Francis Munson, complainant, against The Mayor, Aldermen, and Commonalty of the City of New York and the Comptroller thereof, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 11th day of October, in the

year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the said United States the one hundred and ninth.

[Seal U. S. Circuit Court, South. Dist. of New York.]

TIMOTHY GRIFFITH, *Clerk.*

Endorsed on cover: S. New York C. C. U. S. No. 160. Francis Munson, appellant, *vs.* The Mayor, Aldermen, and Commonalty of the City of New York and the Comptroller thereof. No. 161. The Mayor, Aldermen, and Commonalty of the City of New York and the Comptroller thereof, appellants, *vs.* Francis Munson. Filed 27th October, 1884.

Supreme Court of the United States.

Nos. 160 and 161.

FRANCIS MUNSON,
Complainant and Appellant,

agt

THE MAYOR, &c. OF NEW YORK,
Defendant and Appellant.

Brief of Complainant.

Supreme Court of the United States,

In Equity. Nos. 160 & 161.

Francis Munson,
Complainant and Appellant,

agst

The Mayor &c., of New York,
Defendant and Appellant.

Brief on behalf of Complainant.

I.

Abstract of case and history of the unlawful use by the City of New York, of Complainants' patented plan of filing bonds and coupons in books.

Complainant's said plan was adopted just after the breaking up of the Tweed Ring. During such ring rule enormous liabilities were created against the City, which had to be met by the issue of several series of bonds. Disorder, the natural result of fraud and corruption, had been rife in all the financial affairs of the

City. Andrew H. Green, one of the defendants was appointed comptroller as the successor of Connolly. Immediately upon such appointment he set on foot the most thorough reforms in all the City's financial affairs, looking to economy, and the most efficient remedies to correct past abuses and disorders. The complainant's plan was selected by Mr. Green as the best one to systematically and safely keep the matured bonds and coupons of the city. It was selected in preference to the *en masse* or the Warren systems, (hereinafter referred to).

There is always economy in order, and especially should orderly methods be adopted by public officials by the systematic preservation of the primary evidence of the payment and disbursement of the people's money, because by such preservation any inquiries from the Mayor, Common Council, Legislative Committees or other bodies, can be at once answered by the financial officers of the city. With this end in view, Mr. Green, after conference with his subordinates adopted the complainant's plan in 1872, and soon he was warned to desist. He did not heed the warning, and defied the complainant by continuing such use on a more elaborate scale, until the number of books so used was 119.

This suit was therefore commenced for an infringement in October, 1874, but no heed whatever was paid, and new books were subsequently made up to 1876. Mr. Green was succeeded by Mr. John Kelly as comptroller, and he continued to use such books, during his whole term of office. Mr. Kelly was succeeded by Mr. Allan Campbell, as comptroller, and he continued such use until ordered to cease, by a permanent injunction. Neither of said comptrollers would yield in the slightest degree, but contested complainants suit. It was not till June 11, 1881, or for a period of nearly seven years after suit brought that complainant obtained a permanent injunction.

During all this time the responsible duty of caring for the coupons and bonds after payment or cancellation was entrusted to one William B. Carroll, and he had control of all the Munson books. He could not have had experience as he testified on February 9th, 1875, that he was 23 years old, (p. 9.) As soon as the permanent injunction was served, Carroll thereafter, according to a plan of his own, packaged or pretended to package away the said coupons, (bottom p. 66 and middle p. 71.) Suddenly, Carroll died, in the latter part of 1882. In April, 1883, the community was startled by the astounding development that the packaging system adopted by Carroll had resulted in a loss to the city of from $100,000 to $150,000 by reason of the matured coupons, (which should have been pasted in the Munson books, were it not for the injunction), had been disposed of before being cancelled and packaged, and that the city upon a second presentation had paid them again. So far as known the money so lost has never been recovered. These transactions were known as the "coupon frauds." On the 29th day of January, 1884, Mr. S. Hasting's Grant, the then Comptroller, made a motion herein to suspend the permanent injunction herein and be allowed to resume the use of the Munson books. In his affidavit Mr. Grant says: "It is consequently desirable for the public "interest and for the safe and easy management of the "business of my office that I should be permitted to "continue the use of the books, decided by the Court "to be an infringement of the Munson patent, by con-"tinuing to paste or fasten thereon coupons of the "bonds for which said books were prepared and for "which they were used, up to the date of the injunction "in this case." Mr. Grant was the first and only Comptroller who made such a frank admission that the Munson books were of use and preferable to the Carroll system of packaging, or rather of *not* packaging. The Court denied the motion by order dated February 6th, 1884.

This suit was brought in the Circuit Court of the United States for the Southern District of New York, on the 11th day of November, 1874, for an infringement of Letters Patent of the United States granted to Francis Munson; said patent being dated April 2d, 1867, and numbered 63,419.

The bill of complaint was in the usual form with the ordinary prayers for an accounting of profits and damages and for a perpetual injunction, (p. 4.)

The defendants' answer *did not deny the alleged infringement*, but set up that the same improvement had been used long prior to the date of said patent by four separate persons, naming them, all residents of New York City; denied making any profits; and alleged that the improvement was not patentable. (p. 6.)

The complainant proceeded to make out his *prima facie* case by taking the testimony, before Isiaah T. Williams, Master &c., of William B. Carroll, John Buckingham, complainant and Albert L. Munson. Defendant, produced before said Master, L. P. P. Higgins, W. E. Warren, J. O'Brien and W. E. Carroll.

After final hearing, his Honor Judge Wheeler, filed his opinion on June 15th, 1880, (p. 53) holding that there had been no public use, that defendant had infringed and ordered an interlocutory decree for accounting &c., (p. 54).

Subsequently defendant made three unsuccessful motions for leave to amend the answer, and open alproceedings, the first was denied by his Honor Judge Blatchford, and the other two by his Honor Judge Wheeler (pp. 122, 123). The first of these motions was denied after proofs taken on final hearing, the second pending the accounting and the third after the accounting.

The accounting was ordered before Stephen D.

Law, Esq., as Master, and after taking proofs of damages and profits, he rendered his report (pp. 108 to 119) on the 22nd day of September, 1882, wherein he reported that complainant was entitled to $6,202.40, the same being 2½ cents per bond, per year; there having been inserted in the infringed registers or books by defendant 422,308 matured coupons, and 4,904 cancelled bonds, for periods from 5 to 9½ years. Defendant filed 13 exceptions to the Masters' findings (p. 119 to 121), and the exceptions came on to be heard before his Honor Judge Wallace, who filed his decision May, 1883, sustaining all of said exceptions (pp. 125 to 128,) upon which a final judgment was entered Jan 11th, 1884, overruling Mr. Law's report, awarding six cents damages to complainant, ordering the complainant to pay all the expenses of the accounting, the Master's fees, &c., some $750, and allowing complainant $76.25 costs against defendant. Subsequently defendant appealed from the interlocutory judgment (p. 132) and complainant from the final judgment, which set aside the Masters' report, (p 135.)

It was proven that defendant had caused to be manufactured 119 registers for the reception of 29,922 bonds, and their coupons amounting to about 1,500,000, representing together about $44,000,000, (p. 116,) and had used them from 5 to 9½ years.

II.

The Improvement was Patentable.

Defendant claims that this is not an art machine manufacture or composition of matter. We claim that it is an improvement of an art. It has been decided in numberless cases that if an improvement is *new* and *useful* it is patentable. That complainant's patent is

such cannot be questioned. The defendants' adoption and use of it for nearly ten years prove it to be useful and valuable, and hence patentable.

This is an improvement in the art of systematic preservation and cancellation of bonds and their coupons; at the same time furnishing opportunity to record necessary facts in reference thereto. Prior to this patent. the only art of preserving bonds and their coupons was by packaging, called the *en masse* system. This was a crude, confused and troublesome system, rendering securities difficult of access, and requiring great time and trouble to keep them.

These packages in a large corporation must have been numerous and cumbersome.

It was to remedy this clumsy and unbusinesslike method that Mr. Munson began experimenting in 1855 or '56, to produce some improvement in the art of filing away these securities; and he succeeded in 1867 in perfecting and receiving Letters Patent for the improvement which is the subject of this litigation.

The improvement is designated by Albert L. Munson (p. 27) a witness for complainant, a patent expert of eight years' experience, "as a structure, not mechanical, probably coming under the head of an art, Structures have been made for other purposes, and have been patented."

The claims and specifications (p. 28) of complainant clearly illustrate the value of this improvement on the old method. There can be no doubt that the designation of Albert L. Munson is correct, and that this improvement is a structure coming under the head of an art. Due respect should be paid to this, the only testimony upon the subject. It was uncontradicted. The form of a book is the structure upon which this improvement was made. Any article which by im-

provement can be put to a novel use besides its original, is a new article, although outwardly it presents the old form for the old purpose. Hence, if a chair, by the addition of new devices, can be utilized as a step ladder umbrella stand, book rack &c., a patent could certainly be obtained on the new improved use. Likewise a dining table could be converted into a billiard table, a bed or a wardrobe, and the improvement patented. Again a wardrobe, sofa or bookcase may be changed into a bed, although to the eye nothing but the form of a wardrobe can be seen. The details of construction, application and use form the essential elements in all improvements, and should be considered in relation to the old devices to which they are applied. A patent can be issued when an old and common article by ingenious methods of applying attachments may be made to serve a variety of purposes. Why should a register like complainants, taking the outer semblance of a book be an exception? The structure for convenience sake is arranged between covers and on pages like a book. But its contents are not the usual contents of a book. The ingenuity in the change of use is in the arrangements on the pages, formed by characters which are used in books, the lines, letters and figures, and are original in their combination, and for this purpose only were the instances above mentioned. The chair, table and wardrobe, by means of concealed arrangements are converted into other articles of use while retaining the form of the original articles. Now a book can be so arranged that its pages shall not be used as they are ordinarily used, and if that book can by ingenious devices in paging, squaring, lettering &c., be converted into an index register as a receptacle for the safe preservation and verification of the most popular of financial securities, why should a patent be declared invalid issued for so novel and useful a purpose? But when in addition to the systematic preservation of paid bonds and coupons, such register can

be further utilized to protect the companies issuing the securities from improper and unlawful holders, or from duplicates or counterfeits, and be duly advised as to the many facts that may transpire in reference to such securities, and warranting a refusal to pay, so much the more should the patent be upheld.

Patents have been granted with great freedom upon books adapted to specific uses a few of which are as follows. Patents Nos.

169,828	1875	An account book.
164,873	1875	A blank book.
167,447	1875	A copy book.
168,796	1875	A pocket blank book.
146,937	1874	Check book.
135,769	1873	Blank book.
143,075	1873	Index book.
134,546	1873	Memorandum book.
150,245	1873	Scrap book.
175,327	1873	" "
187,448	1877	" "

Mark Twains scrap book also, which is no more novel nor useful than complainant's register.

Beside the above, between the years 1867 and 1873, there were many patents issued upon conductor's ticket books, duplex ticket books, passenger and forms of railway ticket books, and a list of fifteen such patents within the years named can be found by a reference to the Official Index of Patents, issued in 1873. Doubtless many more have been patented since. Therefore the insinuation in defendant's brief, that complainant's patent "slipped through" the Patent Office is unwarranted. With these views, and the action of the Patent Office in patenting books for a variety of purposes, the complainant respectfully contends that his patent should not be declared invalid, or an exception made unless for the clearest reasons.

III.

The Complainant's Plan was not a Subject of Copyright.

The defendant's answer does not set forth any such claim, and hence it ought not to be raised in this controversy. It was, however, argued elaborately by defendant's counsel before Judge Wheeler on final hearing, and he very briefly disposed of that part of the defense (p. 53). In Drury v. Ewing, I Bond, 540, relied on by defendant's counsel, certain dress patterns in diagram form in books were copyrighted. Such patterns, illustrated upon the leaves of a book, were clearly the subject of copyright. But the principles involved in a book containing such designs are entirely different to those covered by the books used in complainant's plan.

A copyright is a protection granted to an author in placing upon the leaves of a book or a similar surface, ideas expressed by means of letters, characters, or designs, which ideas are not necessarily new or original. The book or surface is simply a convenient form, in which these expressions of ideas are contained. Therefore this book of patterns was simply a collection of diagrams, not necessarily original, but the combination of them upon the leaves of a book was sufficiently original to entitle the author to a copyright. The same is true of all copyrighted articles. An article or book is copyrighted, when the author is protected from having another person print a copy of that article or book or their equivalent. The book or article is copyrighted *as a whole*, and its value is in its *present* condition, *regardless of what may be done with it in the future*. The book may never be read, the sheet of music may never be used, the diagram of patterns may never be referred to by a dressmaker, but nevertheless no one will be allowed to appropriate the expressions

of the author's ideas so illustrated. So that the article is protected because the author has by skill made it of *present* value.

But the invention of the complainant was entirely *new* and *useful*. No one before complainant conceived the idea of so adapting the leaves of a book that bonds and coupons could be preserved upon them after cancellation in the exact shape in which they were originally issued, or its equivalent. Therefore, the plan was the subject of a patent and not a copyright. The books in which the bonds and coupons were to find a resting place were of no *present* value, as were copyrighted articles. They only become useful when the bonds and coupons were filed away in them. If the defendant had only had numbers of registers manufactured, printed, squared, paged, &c., exactly as laid down in the specifications of complainant's patent, but had never pasted any coupons or bonds therein, the defendant would not be liable. But when the defendant *uses* the books for the purpose of preserving coupons and bonds therein, then the liability is created. So that the patent covers the *use* of the books. But a copyright of complainaint's invention would not permit any person to even make or copy any such books, even if they never used them, which would be absurd. The complainant would not be in the least damaged by an unused book made and constructed on his plans, but the author of a copyright is damaged the moment his article is copied.

The complainant filed his plans and specifications in the patent office, showing in what manner books could be *used* in the systematic preservation of bonds and coupons, and the patent officers, well versed in such matters, granted his application and the government thereupon granted complainant the exclusive right to *use* or to allow others *to use* such books, for such purpose. If the patent officers had said to complainant "You should have your invention copy-

righted," he would have replied, "No, I care not how many registers are made under my plan, but what I desire is, protection against the *use* of such registers. If I ask for a copyright you would simply protect me from having the books copied, for which I care nothing."

If, instead of a book, complainant had the drawer of a desk or other receptacle for such preservation it would be the *use* of such drawer or receptacle that would be protected, not the making of such drawer, without using it. A copyright would not permit the *making* of such a book, which, *of itself*, is an entirely useless article. But the protection afforded by a copyright is that the author's ideas shall not be copied at all, which protection, of itself, would not avail complainant, and hence ought not to be granted. The Hawes Hotel Register Case, decided by Judge Woodruff, and cited in 5. O. G. 491 is applicable to the case at bar. The learned Judge argued that it would not harm the inventor of the hotel register if thousands of such registers were made, so long as they were unused but *the use* of them is his damage, and therefore Hawes obtained a patent instead of a copyright. Judge Woodruff in arriving at the conclusion that such a register was not the subject of copyright, also considered that the advertisements in each separate register would not necessarily be the same, but perhaps different ones, and therefore Hawes was not an *author*, but the inventor of using an old article for a new purpose. The complainant in this case was not an *author*, but he was an inventor of a new art of using an old article. The squaring, heading, lettering, paging and backing of the books for each series of bonds would have to be different, and therefore he could not be protected by a copyright in anything but the original, which he would have filed. A register manufactured in all its details, in which to preserve a series of Park Bonds of New York City, of the par value of $1,000

each, with say 60 coupons annexed to each, bearing 4 per cent. interest, payable annually could not be used for a series of the bonds of Cook County, Ill., for $500 each, with say 40 coupons annexed bearing 7 per cent. interest, payable semi-annually. A copyright would only protect the *copying* of the one on file, *and therefore a copyright would have to be taken out for every register made for every one of the innumerable series of bonds and coupons issued.* We therefore assert that a patent which covers the use of a book, expressly constructed for such an original purpose is the only available method of securing protection to the complainant.

IV.

The Accounting.

By the Interlocutory Decree (p, 54) it was referred to S. D. Law, Esq., to report (1) the gains, profits, and advantages obtained by defendant by using complainant's patented invention, and (2), the damages which the complainant has sustained thereby.

Before him complainant produced W. B. Carroll, clerk in defendant's bond and coupon department, who testified as to the number of books made and used by defendant under complainant's patented plan, and the number of bonds and coupons pasted therein (p. 37). the defendant also produced, in response to summons issued by the Master, three registers in which sundry series of bonds and coupons had been pasted (p. 56.)

Next Mr. Munson, the complainant testified by deposition taken in Chicago (pp. 93 to 111, and 107 and 108.)

The testimony given by him did not give "any spe-

cific or definite facts or basis, and can but be considered so indefinite and conjectural as not to furnish a reliable standard of measurement" (Master's report, top p. 115). The complainant's other witness before the Master was Amos T. Hall, taken by deposition in Chicago (pp. 101 to 106.)

The testimony of Mr. Hall relied upon by complainant appears only upon pages 101–2 and 3.

What effect the Master gave to Mr. Hall's testimony appears upon p. 115 of his report.

For defendent there appeared before the Master W. B. Carroll, A. J. Donovan, J. O'Brien and A. Hendricks (pp. 61 to 85.).

Complainant claims that neither of defendants witnesses could, by reason of their lack of experience, testify in such manner as to contradict Mr. Hall, or be able to testify that no benefits were or could be derived by defendant by the use of complainant's plan.

It is claimed on the part of complainant that this *en-masse* system was the only system, put in evidence that accomplished any where near the same result as complainant's plan, because the first was the simple packaging of coupons *outside of books*, while complainant's was the systematic arrangement *of both bonds and coupons inside of books.*

The Warren system comprehended the plan of filing *matured* coupons *only*, while complainant's comprehended such filing of *both* bonds and coupons, either before or after maturity. Therefore the Warren plan did not produce the same or an equivalent result as complainant's plan.

The defendant's witnesses Donovan, O'Brien, and Hendricks did not pretend ever to have used complainants plan and therefore they could not testify as to the comparative merits or advantages between it and any other plan.

Mr. Hall testified July 8th, 1881 (p. 101), that he was then Treasurer of the Chicago, Burlington & Quincy Railroad, and had been such since January, 1855, or for a period of over 26 years, He commenced service with the Michigan Central Railroad in 1838, and after that and before 1855, was connected at different times with the Michigan State Bank, and with the City of Detroit as its Auditor and Comptroller. As Treasurer of the Chicago, Burl'n & Quincy he had used complainant's registers from 1858 to 1871, when such registers were all burned up in the great fire, and thereafter he was relieved of the duty of keeping and paying bonds and coupons and such duty devolved upon the assistant treasurer in Boston. It is evident from inspection that complainants plan is only practicable when used from the creating to the maturity of a series of bonds and coupons, and there fore the assistant treasurer in Boston after the destruction of the registers properly returned to the *en masse* system.

Therefore the testimony of the Complainant's witness Hall was conclusive and uncontradicted, and it would have been error in the Master to have disregarded it, because:

1. He was presumably very experienced in the use of the *en masse* system, having been the head of all the financial affairs of a municipal corporation, a bank and three railroads for a period of eighteen years before he used the complainant's plan, and he afterwards used the latter plan at least ten years.

Having had a financial experience of forty-five years his testimony was entitled to distinguished consideration.

In all treatises and books on the laws of evidence and in great numbers of decisions, it has been stated almost as an axiom that the opinion of a person who has had a long and varied experience in any particular

profession or business, upon a subject particularly pertaining to that profession or business is entitled to the highest consideration.

In this Court it was held in Brook v. Jenkins (3 Mc L., 432) that "great respect is due to the opinions o "professional men on matters which relate to their professions." In the New York Court of Appeals it was held in Harris agt. Panama Railroad Co., (32 N. Y. 427) that "to render the opinion of a witness com- "petent he must in general be peculiarly qualified to "speak on the subject, and have knowledge not pos- "sessed by the mass of persons of ordinary experience "and intelligence."

Therefore the opinion of the witness Hall was competent, and being uncontradicted must control.

2. The testimony of Mr. Hall furnishes a complete basis of calculation as to the profits resulting to the defendants patented plan.

His testimony relates exclusively to the *saving of labor* between using the *en masse* system and complainant's plan.

He was asked question 7 (p. 101) as follows:

"From your acquaintance with the bond cancelling "file in question, and your experience as a financial "officer, are you able to say what. if any advantages "or benefits result from the use of said file?

"A. * * * Well, to answer that question fully.—I "should have to go some what into detail, *with regard* "*to the labor saved by them.* Prior to the use of this, the "coupons were filed *en masse*, would pay 500 or 1000; "keep them all together in one package, and any "question arising as to the non-payment of any of "them, or the loss of a coupon involved the labor of "looking over the whole package carefully to ascer- "tain if there were any coupons absent which should

"have been paid; by the use of this file as soon as the "coupons were paid they were pasted upon the file, "over the numbers in the blank to which they belonged, "and by looking over the pages at a glance we could "determine whether any coupons were still outstand- "ing unpaid. These questions came up very fre- "quently with us."

Q. 10 (p. 102). "What in your judgment would "be the advantage or benefit in money for the use of "the plan in question?

A. "The answer to that question is of course an es- "timate; in my opinion, the saving of labor of an ac- "countant would amount to *at least* half a dollar a "bond."

Q. 11. "Is that in the nature of a royalty? A. I "suppose it might be called a royalty. I would like "to add something to that; *that this valve is, in my "opinion the actual saving of labor to the accountant in "charge of the bonds and coupons.*"

He states further in the latter part of his answer to to the next question. "I fixed my estimate upon the "average length of time the bonds of the corporations "with which I have been connected have been made to "run, some of them maturing in ten years, and then at "various periods up to forty, the average being about "twenty.

In answer to question 13, he says, "the value com- "mences with the construction of the file and its use."

On cross-examination, the witness further testifies cross-question 21 (p. 103). "Upon what basis did you "fix the sum of fifty cents per bond, as an estimate of "the saving of labor to an accountant, in charge "of the corporation bonds and coupons, and, in your "opinion, is that saving of such a character, that the "accountant would pay that sum out of his salary?

"A. My estimate is based upon the extra labor that "was required in keeping the bonds and coupons in "the old way, and the accountant may be might not "be willing to pay that out of of his own salary, but "I should be willing to pay it out of my salary sooner "than use the old way."

The master gives his conclusion as to the competency and effect of this testimony of Mr. Hall, as follows, (p. 115):

"The other witness, Hall, has had practical ex- "perience in the use of both the *en masse* system and "the Munson system, and *his opinion* is derived from "that experience, and is based upon the extra labor "*required in keeping* bonds and coupons according to "the former system as compared with the Munson. "In his opinion the advantage or benefit of the Mun- "son system is at least half a dollar a bond, running "for twenty years. * * * The witness, Hall, is "the only one of those examined, except the defend- "ant's witness Carroll, who has been practically fam- "iliar with the use of the Munson system, and has also "used either of the other systems, to which evidence "has been given. * * * It being conceded that the "Munson system is useful. and it being shown that by "its use there is effected a saving of time and labor "over other prior known systems in attaining a like "result. I am of opinion, upon consideration of all "the testimony in the case, that the value of the Mun- "son system as fixed by the witness Hall—fifty cents "per bond, running for a term of twenty years, or two "and a half cents per bond per year—is a reasonable "measure of value for the benefit and advantage de- "rived from the use of the Munson system."

It therefore clearly appears that Mr. Hall fixes his opinion upon the extra labor required *in keeping* the bonds and coupons by the *en masse* system, beyond the

Munson system and he further states in the answer that he would be willing to pay it out of his own salary (p. 103). The master finds that such saving between *keeping* them by the *en masse* and Munson systems has been proved by Mr. Hall.

Such keeping includes all the care of the bonds and coupons, the filing away, the preservation, and all necessary references thereto.

3. That Mr. Hall knew the difference between positive testimony and conjecture, is apparent by his further saying (p. 102), "In addition there is a value "but whether it can be estimated in dollars, the satis- "faction in knowing that you are right, and that there "can be no mistake in examining the files;" showing that he fully intended his testimony in regard to the saving as positive fact. It is difficult to understand how any stronger or more pertinent testimony could have been given. The only basis on which to form a conclusion was the difference in labor, and upon this basis Mr. Hall founded his opinion.

It was not necessary that Mr. Hall should cipher out the difference. He had probably made the calculation years before. If defendant's counsel suspected that he could not cipher it out, he would certainly have required him to do so. Defendant cannot now assert that he could not do it. The cross-examination of Mr. Hall shows that defendants' counsel ingeniously ceased his inquiry in that direction, and now claims that Mr. Hall could not have done the ciphering or computation. Such claim has no foundation and the presumption must prevail that if questioned Mr. Hall would, by reason of his great experience, have made such a perfect calculation as would have settled the question beyond all controversy.

If defendant chose to let Mr. Hall alone, his opinion stands all the firmer, because it is not in the slightest contradicted by himself or anybody else.

4. *There was only one element in question.*

It was not complicated by any mixed values. There were no fluctuations in the prices of materials to be considered. No other patents were involved; no questions arising from intricate machinery. The labor required was ordinary intelligent labor, and not skilled. These complications being wanting it was a matter of simple calculation, between the time required to do a certain piece of work in one way and the time required to do the same piece of work in another way, and the value is the difference in the time saved.

In all the cases cited by defendants learned counsel before the Master, and on the hearing on his exceptions there were these complications of elements, and no case has been cited where the elements were so simple as in this. The rule is not that no opinion of any witness is competent to form a basis for a calculation, because that would not permit of any opinion based on a latent calculation. Such opinions are given in Courts every day upon great varieties of subjects. *Opinions are not evidence where witnesses do not possess such knowledge of the question at issue as would entitle their opinions to the weight of evidence.*

If the rules of evidence are to be adhered to, the Masters proposition that the benefit accrues whenever the improvement is used, must prevail (fol. 205.)

Mr. Hall testified that the benefit or saving of labor between the complainant's plan, and the packaging or *en masse* system was *at least* fifty cents a bond. That was contradicted by defendant's witness Carroll (fols. 122 and 123). Carroll so testified in the face of the fact that the defendant persistantly used the complainant's plan for 9½ years, instead of the generally used package system.

The defendants four comptrollers one after another by such persistant acts agreed with Mr. Hall that there

was a decided benefit to the City in using the plan, but they allow an insignificant clerk, a boy in age, to go upon the stand to testify to their stultification. They could have ascertained upon the very first payment of coupons, whether it would pay to continue the complainant's plan, or to package the coupons. They found that complainant's plan did pay, and therefore in some of the books there appears *nineteen* semi-annual coupons.

Taking into account Mr. Hall's great experience and his impartiality, and Carroll's interest in testifying for defendant (and he did *all* the testifying, none of the other witnesses knowing anything of complainant's plan), his inexperience, *and his admission that he had never computed* the difference in time spent between the complainants, and the *en masse* or packaging system, convinced the Master that Mr. Hall's estimate furnished a basis.

5. The Master was appointed by the Court to take such proofs as were offered, as to profits, etc., and report, and upon proofs so offered be found in complainant's favor $6.202. No competent proof was given or offered of the difference in labor between the complainant's and the Warren system. Therefore the Master had to report upon the testimony as to the difference in labor between complainants and the *en masse* system, as given by Hall for complainant and Carroll for defendant.

This is the rule illustrated in 17 Blatch. 249. 1 Fish 289 and 537. 2 Blatch. 132. 14 Blatch. 141. 110 G. 741. 4 Otto, 695. 120 G. 709. 23 How. 487.

More especially in 13 Blatch. 197. 6 Fish 506. 4 Fish 12 and 57. 15 O. G. 965. 2 Fish 174.

Patents are so varied there can be no fixed rule of damages, and each case must stand by itself.

1 Holmes 88. 5 Fish 290. 10 G. 609.

Actual damages are profits defendant has made. 4 Fish 57.

Damages to be settled *by evidence*, not conjecture. 1 Saw 502. 4 Fish 494. 17 Wall 460.

Damages are what defendant has saved by use of patented improvements. 12 Blatch. 20. 7 O. G. 176.

In 2 Otto 719, Justice Miller said, "in cases when "profits are proper measure of damages such profits as "the infringer has made, *or ought to have made* gov- "ern."

In 17 Wallace 462, Judge Swayne says, "The plain- "tiff must show his damages by evidence. They must "not be left to conjecture by the jury. They must be "proved and not guessed at." See also 4 Fish 404.

The master based his decision on Mowry vs. Whitney. 14 Wall 620 & 650. (fol. 204). The general rule for recovery of damages in action at this character, and the extent of such recovery is laid down in this case, which from its frequent citation must be familiar to this Court.

In 1 Bond 279 & Fish 532 it was stated that the law gives plaintiff profits *if they can be ascertained*. See 5 Fish 494. 1 O. G. 492. 9 Wall 788.

In Stephen vs. Felt, 2 Blatch 37 Justice Blatchford said, " We do not think the plaintiff ought to be held "to the most explicit and exact proof of the amount of "damages sustained, and that the jury were warranted "in exercising a liberal discretion.

But is the case at bar *exact* testimony was given upon which the master computed the value of the benefit, in dollars and cents, that the defendants had received from the use of complainants plan.

The Master as before stated, disregarded all testimony not based on fact, as conjecture, thus following

the rule laid down in Herring vs. Gage, 15 Blatch. 124.

In N. C. B. I. Co. vs. T. H. C. M. Co. 19 Fed. 114 it was held that "The burden is upon the plaintiff to "show the amount of damages he has suffered, *and if "he furnishes reasonably satisfactory evidence on that sub- "ject he is entitled to substantial damages.*

It was held in Marsh vs. Seymour, 7 Otto, 360, that damages may be allowed, though the business of the infringer was so improvidently conducted as to yield no substantial profits.

See Rev. Stat. § 1921 and many cases cited.

In late cases the rule has been considerably relaxed, and in favor of allowing patentees a fair recovery against infringers who persist after being sued, in using the complainants patent, and only desist when compelled by permanent injunction. In this case defendants persisted from Oct. 14, 1874 to Jan. 11, 1884. This rule is shown in the case of Bigelow Carpet Co. vs. Dobson where it was held that "in cases of wilful infringement "respondents ought to be held in most rigid accounta- "bility, and no intendment ought to be made in their "favor founded upon the alleged inconclusiveness of "complainants proof of loss. Such proof ought to be "interpreted most liberally in favor of complainants, "within the limit of a proximate ascertainment of their "damages." 10 Fed. Rep. 385.

V.

The Master's Report.

The well known character, and excellent standing at this Bar, of the late Stephen D. Law, as a patent

lawyer, of nearly 50 years experience is a guarantee that any labor devolved upon him by the Court, would by performed with the utmost care and skill. Being the author of patent digests, he was doubtless as familiar with the decisions of this Court upon questions arising under patent controversies as any body outside of the judges of this Court. It is not too much to say that his report in this case is as near perfection as the facts would warrant. The controversy before him being to determine what defendant had gained by using complainants plan he ably compares that plan with others in use at the time of the issuing of the patent and of the original infringment, and after such comparison distinctly finds that none of the other plans in and of themslves accomplished the same purpose or result as the Munson plan. Neither of the other plans contemplated the safety or perservation of any bond or the noting of any incident connected therewith, but they related exclusively to the simple perservation of past due coupons.

After illustrating the differences between the plans he discusses the evidence placed before him upon the question of profits.

The Master thereupon draws conclusions briefly and pointedly from the evidence presented to him. He comments favorably upon the great experience of Mr. Hall, and decides that his testimony has formed a basis from which he (the Master), could make a calculation of the amount of labor saved in general terms by the use of the Munson plan. He referred to the testimony of Carroll as not contradicting that of Mr. Hall, thus giving the latter full effect. He thereupon figures up in money the advantages defendant has gained. The report is now left without further comment.

We will, however, enter into a discussion upon the meaning of the words and phrases used by Mr. Hall, and by the use of which he proved his own competency as he went along. From the peculiar language used,

by Mr. Hall, he wanted it understood that he had previously calculated the profit *from the fact of a saving, to which saving he testified;* and that the result of that calculation of the extent of such saving, was his opinion, or estimate.

Worcester says, "We form opinions *on facts.*" Now by Webster, the definition of the word "estimate" is, "to compute," "to calculate," "to reckon.,, Again Webster says, "We estimate profits, losses and damage." Worcester defines "estimate" as "the computation of loss or gain." By the use of such language Mr. Hall was determined to be understood as *not* conjecturing, guessing or surmising. The rules of evidence will not permit a profit to be based on anything short of an estimate, or calculation *based on a fact* which as above stated means a computation, calculation or reckoning. On the other hand, a conjecture is a *notion,* not necessarily based on a fact, or proof of a fact, but an estimate is an *opinion* based on a proof of a fact. All damages are estimated, except where the actions are based upon contracts for the payment of certain sums of money at certain dates. Any one could *guess* (and make a pretty good one), as to a profit to defendant from its persistent use of the plan, of 50 cents per bond, or 2 and a half cents per coupon, but no one could *estimate* that profit, unless he could from his own experience calculate and compute from his own personal knowledge of a saving. In the one case it is to judge at random; in the other, on calculation; to suspect without certain knowledge, to know from certain knowledge. The Court will again note that Mr. Hall voluntarily states that there was a further value which could not be estimated in dollars and cents by him (fol. 183), for the implied reason that he would have to conjecture it, which goes to show that he had based his estimate and opinion upon a certain calculation he had made upon the fact of saving, in-

distinction from a conjecture where he had not calcu lated.

We claim that therein, whereby frauds, over-issues, thefts, losses or other facts can be appropriately noted, is of immense value, but that that benefit cannot be estimated and so must be lost to complainant.

Again, Mr. Hall testified that the saving was, *at least*, 50 cents a bond (middle of p. 102). By the use of the words, *at least*, in that connection, Mr. Hall was determined to have it understood that his sworn estimate of the saving was an underestimate, thus giving the benefit of his testimony to defendant. If he had testified to five dollars a bond it would probably have been nearer the truth. But he seems to have resolved to have his testimony so placed before the Master that there could be no doubt that there was a larger saving. This Court will certainly give that effect to it. The defendani should therefore tender its thanks to Mr. Hall for not testifying to his full estimate.

There are thousands of type-writers who can instantly testify accurately, as to the amount of labor saved between long hand and type-writing of a given number of words or pages. There are builders who can go through two houses and tell the difference in cost of the two accurately. There are manufacturers of cotton or woolen goods who can take one piece of goods in one hand, and another in the other, and can tell at once the difference in the cost of the raw material or of the manufactured goods. Numberless instances happen in every day life, where persons skilled in their trades or professions, can tell from their experiences as to differences in times, accounts, distances, savings and numberless other detailes with great accuracy, and in nearly every case that is tried in Court such testimony is given, and it is always competent, if the witness has sufficient knowledge upon which to base his conclusion.

This competency has however the greater potency

when the witness has been for a great number of years at his business, and the inquiry pertains to one of the prominent features of that business. Doubtless it had been a source of great anxiety to Mr. Hall for many years to know how to safely and systematically preserve these matured certificates, and it must have been a study of years to find out the most economical methsds for that end. His complete adoption of the Munson system as an economical measure, was the result of that study, and from his experience his estimate of saving *was a very easy problem*, but when he took special pains to add the words, "at least" to his testimony, every legal and impartial mind must consider it of the highest value, and give to it the most favorable consideration.

If, on the other hand, the Court will take the pains to read the testimony of Carroll, who was brought to answer Mr. Hall, the Court will find at every step that he strained every possible point to the effect that there was no saving, but he finally admitted that he had made no calculation and could make none. (p. 71 and bottom of 75.)

Moreover Carroll was only about 24 years of age when he testified, and he probably had 50 superiors over him in the comptrollers office, and yet the delicate and responsible duty of caring for coupons representing nearly a million dollars yearly, was entrusted wholly to him, an inexperienced youth of no financial standing whateverr But when the controlling fact appears that he knew nothing about the *en-masse* system, referred to by Mr. Hall, but that he only knew about some kind of packaging adopted by him after the injunction herein was served, his testimony cannot be considered in the slightest as contradicting Mr. Hall. (p. 72). (See plff's. objections, top pp. 67 & 69).

The defendant has furnished abundant corroboration to Mr. Hall of the utility of the Munson plan by its

persistent use of it. The inconsistency of each persistent use, with Carroll's equally persistent crying down the utility of the plan must avail the complainant according to the rules of evidence. In 6 Fish, 115. 9 Phila. 380 and 2 O. G. 675 it was held that "opinion as to impractibility is of little weight compared to actual use."

In 1 Holmes 340, 5. O. G. 429 and 6 McLeon, 593 it was held that "use by defendant is evidence of utility."

The fact that defendant's financial officers see fit to contest the plaintiffs rights at immense costs for counsel fees and expenses furnishes complainant with still further proof of the great value of his improvement. This is shown in 13 Pac. L. R. 33.

The defendant therefore by its accommodating variety of inconsistent acts furnished abundant proofs to the Master that Mr. Hall's testimony produced a proper basis. It was unnecessary for him to discuss them in his report.

Finally the Court will please note that these 119 Registers were manufactured to be the final repositories of bonds and coupons representing about $44,000,000. viz $20,000,000 of bonds and about $24.000,000 of coupons. This estimate of Mr. Hall would allow the complainant from defendant for the very valuable privilege of having such safe, accessible and systematic preservation of about 30,000 bonds and about 1,600,000 coupons the enormous sum of $6,202 or about 1-40 of one per cent upon the par value of such securities, or a saving to defendant of about $700 a year for the privilege of using the Munson instead of the *en masse* system. That was about one-third the salary of one clerk. It can be positively asserted that if such privilege was not worth that sum it was not worth anything.

VI.

THE EXCEPTIONS TO THE MASTER'S REPORT WERE WITHOUT MERIT, AND THE FINAL DECREE SUSTAINING THE SAME SHOULD BE REVERSED, AND JUDGMENT SHOULD BE ORDERED TO BE ENTERED HEREIN TO THAT EFFECT.

Exception I. is based upon the ground that Mr. Law had not the capacity to sufficiently understand the construction of the Munson patent, and that his construction thereof was erroneous. It is respectfully suggested that Mr. Law was entirely capable of construing that patent, and that such construction is correct.

Exception II: The introduction of testimony pertaining to certain books purporting to contain *coupons* in the U. S. Treasury Department, was not of any importance in this case whatever, and the reasons thereof the Master has given. Such alleged books, even if properly made testimony, did not comprehend the filing of the bonds therein, and hence did not pretend to cover the scope of the Munster patent. Besides, Hendricks never used the books nor saw them used (p. 89), and it is not pretendod that he knows anything about the Munson patent. Moreover, a different system of preserving would have to be adopted, where sub-treasurers actually paid the coupons, than where they were all paid in Washington. And so the Munson plan would in such case perhaps be cumbersome.

Exception III. This exception is made to the Master's statement that proof as to those Washington books "is general in its character, and does not go into particulars." The Master was correct, but it would not matter in the least whether he was or not. The alleged books were unavailable with which to make any comparison with the Munson books, even if fuller particulars had been given. No proof was given that

these Washington books were backed, or that the tops of the pages had printed any information as to particulars, or that the squares for the reception of the coupons were numbered, and therefore they failed to cover the express claims in the Munson patent.

Exception IV. This exception is to the Master's statement that "the saving of time and labor by the Munson system is substantially the same, whenever used."

As the question to be determined by the Master was what profits defendant had gained by the use of the Munson plan, he took proofs simply upon the saving of labor between that and other plans. After all the proofs had been taken, he made up his report from those proofs and he stated that time and labor were saved to substantially a like extent whenever that plan was used. The proofs *abundantly* sustained that proposition, and defendant, by persistently using the plan over 427,000 times, and for 9 1-2 years, ought to be the last person in the world to find fault with that assertion. If defendant did not, or could not, profit from its use, why so persistently use it? If such saving was variable, so that at one time it helped to save, and at another it helped to lose, defendant would not have adopted it at all, much less continue it. The above proposition, therefore, of the Master was the foundation upon which he built his report, and defendant, by such use, furnished the groundwork of such foundation, to a very great extent, and probably more than all the other proofs combined. More especially is this true when it appears that Mr. Hall's estimate was clearly an under estimate, he being very careful to use the powerful words "*at least.*" Surely defendant cannot claim immunity when all the authorities upon the point agree that long-continued use is evidence of utility, and utility in all the dictionaries is defined as *profitableness.*

But in order to decide as to such profit the master had simply to gather from the evidence how much the defendant saved by using the Munson plan *over other plans which accomplished substantially the same results* in use at the time of the infringement. As before argued it is apparent that the Warren and Washington plans, from the fact, among others, that they did not comprehend the pasting in of the bonds, (the principal security,) in the registers, did not accomplish what the Munson plan does. Therefore the Master was bound to make comparisons between the results accomplished between the use of either of the above and the Munson plan.

The Master finds (bottom p. 111) "that these sys-"tems of filing the coupons *en-masse*, and the bonds "separate therefrom, did not, it is very apparent, ac-"complish, in and by itself, the same purpose or attain "the same result, which is accomplished or attained by "the Munson system."

He made the same finding as to the Warren plan (bottom p. 113,) and also as to the Washington plan (middle p. 113.) Now as Mr. Hall was the only witness produced by either side who had had personal experience in both the *en-masse* and the Munson systems, the Master was bound by his testimony as to the difference in the value of the labor spent in properly perserving the bonds and coupons under the *en-masse* and the Munson systems. Any comments made by the Master that Mr. Hall had no knowledge of the Warren plan, or of defendant's business, &c., were so made, that he (the Master) was giving effect to Mr. Hall's testimony *only* as to the profits between the *en-masse* and the Munson systems. Such comments cannot be the the subject of an exception.

Exception V. This exception is unavailable.

The Master followed the old maxim that "actions speak

louder than words," and the maxim should apply with great force because the actions were the actions of four separated comptrollers of defendant, who were supposed to have the utmost interest in the defendants financial welfare, and endorsed by their auditors, and deputies, while Carroll, a mere boy was always saddled with the responsibility of testifying to the effect that the defendants financial interests were not benefited, but most certainly injured by using the Munson plan.

The temptation was to great for the master and he could not resist making the remark which seems so offensive to defendant's counsel as to wring from him an unavailing exception.

Besides the experience of Carroll had been extremely limited in the use of the Warren plan by pasting coupons alone in two or three small books (pp. 70 72) in which no spaces were provided for the bonds. He testified, (p. 75) that he had made no comparison of difference in time between pasting in the Warren and in the Munson books, and therefore he was incompetent to testify upon that subject. *No other witness was produced who had had experience sufficient to maks any such comparison, and there was no evidence as to the difference in labor between the Werren and Munson plan.*

Neither Donovan, O'Brien or Hendricks had ever used the Munson plan, and therefor no witness could testify as to any comparison as to saving of labor between the Munson and Warren plans. The proof therefor before the Master, were absolutely confined to the saving between the Munson and the *en-masse* systems, and on those proofs the Master made his findings.

Exception VI. The defendant excepted to the Master's proposition that the *relative* advantages of the other systems, and the Munson system could not be made. This was true, because no witness was produced who could or did testify that the amount of

labor between the Munson and *en-masse* systems was greater or less than that between the Munson and the Warren or Washington plans, and therefore as before repeatedly stated, the only comparison that could possibly be made from the proofs presented, was between the Munson and the *en-masse* systems. Therefore it mattered not whether the Warren plan required more or less labor then the *en-masse* system. *No proof* was offered as to which of the last two systems approximated more nearly to the Munson system, so far as labor was concerned. The proposition of the Master was therefor absolutely correct.

Exception VII is answered above, under Exception VI.

Exception VII. is also answered under Exception VI.

Exception IX. is answered, that as before elaborately argued the testimony of Mr. Hall did conclusively prove, and without contradiction, that the difference in labor between the *en-masse* and the Munson systems was 50 cents per bond. It will be further remembered, that the Master rejected all conjectured testimony and so stated in his report. (top. p. 115.)

Exception X. It was heretofore been argued at length, that Mr. Hall's testimony furnished a proper basis upon which to calculate the profits arising to defendant by reasons, of using the Munson plan.

Exception XI, XII and XIII, have heretofore been fully discussed.

VII.

The decision of Judge Wallace, sustaining defendant's exceptions to the report of the Master, setting aside the report, and compelling plaintiff to pay the Master's fees and other expenses, amounting to about $750 was error.

(1.) The learned Judge followed closely the position taken by defendant's counsel, *and on the argument before him announced that he should set aside the report.* Taking into consideration the great pains and labor spent by Mr. Law, such hasty action was unfair to the Master.

The learned Judge agreed with defendant's counsel that Mr. Law had entirely misconstrued the patent, and by that misconstruction he had made a basis for a calculation of profits that the evidence would not justify. But the Judge himself fell into error by assuming that the *en masse*, Warren and Washington plans *accomplished the same ends* as did the Munson plan. The Judge says, (middle p. 126): "Several other methods "of preserving and filing *paid bonds* and coupons "were open to the use of the public, and the de- "fendants are liable only for the pecuniary ad- "vantages which accrue to them by the use "of complainant's system, beyond that which "would have resulted from the use of other "systems which they had the right to employ *in* "*attaining the same ends.*"

But the Master finds from the evidence before stated that none of those systems, *in and by themselves*, "accomplished the same purpose, or "attained the same results, which are accom-

"plished and attained by the Munson system" (as to Warren plan, middle p. 112, as to *en masse* system, bottom p. 111 as to Washington plan middle p. 113.) The legal conclusion of the Master distinctly found by him from the evidence is entirely overruled by the learned Judge, and he does not even pretend to show that the Master was wrong. But on the contrary the learned Judge claimed that "the complainant did not prove or attempt to prove the pecuniary advantages derived therefrom, and from the nature of the case it would seem impossible to show this unless some data can be obtained as to the percentage of loss that arises from the *overpayment* of coupons.

In answer to all this we say that the proof clearly shows that by virtue of the Munson system accomplishing more than the other plans, that excess, according to the testimony of Mr. Hall appears in the saving of labor, and thereupon he fixes a minimum price of that extra labor at 50 cents per bond. If no data was given by which that figure was arrived at, it is because Mr. Hall was not asked on cross-examination to give any. It was not safe for defendant's counsel to call for that data, because the data which he would doubtless have given would have increased his estimate to double the original estimate. And so defendant's counsel ingeniously dropped Mr. Hall upon that subject. It is now argued by Judge Wallace that the estimate was without a basis to stand on because no data was called for. Mr. Hall, who was presumably familiar with the difference in labor to produce the same result, between the Munson and the *en masse* system, testified that that labor was at least 50 cents per bond. There are in-

numerable instances where parties are constantly changing from old to new methods in labor saving improvements. From their experience they can answer readily the value of the labor saved. If the figuring by which they arrive at such value is not asked for, that value stands *as a fact*, as long as it is uncontradicted.

The learned Judge labored to explain that complainant was bound to prove the computation or figuring by which the saving of labor appears. But as long as defendants did not call for it, and Mr. Hall gave the result of his experience in using the two systems, as to saving of labor, that result *is a fact.* The learned Judge again falls into error by assuming a fact as to which no testimony whatever was given. He states that Mr. Hall's estimate "was based on a comparison between the complainant's system and the method which most remotely approximated to that system of all those which defendant had the right to employ."

To this we say that the learned Judge assumes that the *en masse* system was a more remote approximation to complainant's plan than the Warren plan was. So far as the saving of labor is concerned, no proof whatever was given of such approximation. The fact that the coupons are preserved in books in both instances, is no proof whatever, that in the saving of labor, they approximate more nearly than does the Munson with the *en-masse* system. To prove such approximation, experienced witnesses should have been called by defendant, and competent testimony should have been given by them, and moreover they would necessarily have to be experienced also in the use of each of the *three* sys-

tems. In such a case as that, an estimate would be exceedingly difficult to arrive at even if such witnesses exist.

The complainant produced a competent witness to show the saving of labor between his plan and the *en masse* system. He was not bound to produce other witneses to show other savings of labor, between his and all other plans, or any other plan, for neither of the other plans produced results like his, or like each other. But the learned Judge assumes that that task belongs to complainant, or in absence of such comparisons with the system most nearly approximating to his, he cannot recover. But the learned judge clothes his proposed annihilation of Mr. Law's report, by stating substantially that Mr. Hall's corporation might employ more vigilent and faithful employees than another corporation, and therefore that what his corporation saved would not be necessarily saved by defendant. To this we answer that Mr. Hall testified that there was a saving between the two systems. Does it matter whether the clerks are lazy or vigilant?

The difference in labor is substantially the same, whether done by slow of fast clerks. The complaint produced a witness who testified that, according to his experience there was such and such a saving of labor between the two systems. It is absurd to claim that before complainant would be entitled to recover anything from defendant he must also prove that defend ant's clerks did just as much work in a given time, and received just the same pay as did Mr. Hall's clerks. Such proof could not be given, because no one man could be act-

ing for two corporations in such a manner as to know such facts. But the learned judge argues that such a responsibility the complainant must assume before he can recover of an infringing defendant. No authority was or could be produced to sustain such a remarkable position, and it must have been a figment springing from the numerous technicalities of defendants counsel.

In Campbell v. James, 18 Blatch, fol. 92, "an exception to the Master's report that defendant might have used other forms of cancelling stamps, which would not have infringed, and that the saving by using such other stamp would have been much less than that reported *overruled*, it appearing that such other form was known to defendant, or that the use of the same would not also have been an infringement."

To this we add that it was the duty of defendants to show by evidence the difference in labor between the Munson and *en masse* and the Munson and Warren plans, and then complainant would only have recovered the less. In the absence of such evidence the Master was bound by the testimony offered as to saving of labor. *Non constat* the profit to complainant may have been much greater if the Munson and Warren plans were properly compared by experienced and impartial witnesses.

VIII.

The report of the Master should be sustained by overruling the exceptions, and the final judgment should be reversed to that extent.

In this connection complainant emphatically insists that he shall have interest upon the amount found by the Master from the date of his report and also interest on the Master's fees. The remarkable punishment inflicted upon complainant for his hardihood in attempting to obtain anything from defendant through an accounting should be in a measure made up to him, by allowing him interest, as above stated, and on the further ground that the Master's report was unassailable.

In Turrill v. Ill. C. R. R. Co., 20 Fed. R. 920, it was held that interest was allowable from the date at which the Master's report was in proper form for exception.

It would be safer, however, to save all possible technicalities to have an allowance of interest from the date of the exceptions, viz: Nov. 23d, 1882 (bottom p. 121). As before intimated interest from that date should also be given on the Master's fees, viz: on $700 from the date last named.

The complainant therefore prays the relief above against this flagrant and persistent infringer, who has sought by a fourteen year's contest on technical grounds solely, to defeat complainant's just rights.

Respectfully submitted,
ROYAL S. CRANE,
Compl'ts Solicitor.

Dated, New York, January 24, 1888.

Supreme Court of the United States.

OCTOBER TERM, 1887.

FRANCIS MUNSON, Appellant, vs. THE MAYOR, ALDERMEN AND COMMONALTY OF THE CITY OF NEW YORK, and THE COMPTROLLER THEREOF.	No. 160.
THE MAYOR, ALDERMEN AND COMMONALTY OF THE CITY OF NEW YORK, and THE COMPTROLLER THEREOF, Appellants, vs. FRANCIS MUNSON.	No. 161.

Briefs for the Mayor, Aldermen and Commonalty of the City of New York on the Above Appeals.

These are cross-appeals, in one of which the defendants appeal from the decree of the Circuit Court adjudging the letters patent of the complainant, dated April 2, 1867, No. 63,419, to be valid and infringed by the defendants, and the other is an appeal by the complainant from the final decree of the Court decreeing the validity and infringement of the patent to the complainant the sum of $76.31 damages and costs.

Although the appeals stand in a reverse order on the docket, we shall consider first the appeal of the defendants from the decree adjudging the letters patent to be valid and infringed by defendants.

Statement.

The bill in this case was filed to restrain the alleged infringement of the letters patent granted to the complainant for certain new and useful improvements in preserving, filing and canceling bonds, coupons, certificates of stock, etc., dated April 2d, 1867, No. 63,419. The bill was filed November 7, 1874, and is in the usual form, alleging the grant of the patent and charging infringement.

The answer was filed January 19, 1875, and presents the following defenses:

1. That the complainant was not the original or first inventor of the said alleged improvement.

2. A denial that the defendants have made any profit from the violation of said pretended and alleged letters patent.

3. A denial that the said alleged letters patent are or were granted for any patentable subject matter within the Patent Acts of the United States.

Replication was filed and proofs taken.

The cause came on to be heard before his Honor Judge WHEELER, who rendered an opinion reported in the 3d Federal Reporter, 338.

An interlocutory decree was rendered on the 15th day of June, 1880, in favor of the complainant, for an injunction, account and assessment of damages (Record, p. 54).

The case proceeded before the Master, STEPHEN D. LAW, Esq., from April 6th, 1881, to July 7th, 1881.

On the 22d day of September, 1882, the Master rendered a report (Record, p. 108), finding that the gains, profits and advantages derived by the defendants from the use of the alleged invention amount to the sum of $6,202.40, and also finding that the complainant has sustained no damage by said alleged infringement.

Exceptions were filed to this report by the defendants (Record, p. 119).

It was contended by the defendants' exceptions that the Master erred in his finding of fact, and in not finding certain other facts supported by the evidence; and further, that there was no sufficient or legal evidence on which to base any report or finding of profits

to the defendants. These exceptions were filed on the 23d day of November, 1882.

On the 27th day of March, 1883, said cause came on for hearing upon the Master's report and the defendants' exceptions thereto, and at the same time a motion was made by the defendants to reconsider the interlocutory decree and for a rehearing on the ground that certain evidence taken before the Master showed that the complainant's invention was anticipated.

In May, 1883, a decision was rendered by his Honor Judge WALLACE, sustaining the defendants' exceptions.

On the 11th day of January, 1884, a decree was entered by which it was ordered, adjudged and decreed that the complainant recover of the defendants the sum of six cents damages and the sum of $76.25 costs (Record, p. 129).

From this decree both parties appealed (Record, pp. 132 and 135).

On the 3d day of October, 1884, it was (for the purpose of avoiding any objection on the ground that that the point had not been presented to the Court below) stipulated that, for the purpose of appeal, it is to be considered that the motion to reconsider the interlocutory decree and for a rehearing was duly heard and denied by his Honor Judge HOYT H. WHEELER though such hearing has never been had (Record, p. 124).

THE COMPLAINANT'S APPEAL.

Assignment of Errors.

1. The Court erred in decreeing that the patent of the complainant was good and valid in law.

2. The Court erred in holding that the defendants had infringed said letters patent of the complainant.

FIRST POINT.

The Complainant's Patent is Invalid.

The patent will be found at page 28 of the Record.

By this it appears that the patent is granted "for an improvement in filing and recording bonds, etc." The specification announces "certain new and useful improvements in preserving, filing and canceling bonds, coupons, certificates of stock, etc.," consisting in "providing a book or other register, with pages corresponding in size, style and number with the bonds, coupons, certificates, etc., to be used," on which pages "the said bonds, coupons or other certificates, when paid, are pasted or otherwise attached, and thus preserved and canceled." In a more detailed description the inventor proceds to say: "I provide a book, *or set of books*, having each page printed or ruled to correspond in size and style with the bond and its coupons, or other documents, whatever it may be, with a heading showing the number, date, when issued, to whom issued, when and where payable, amount, what issued for, rate of interest, and when and where payable, together with such other facts as may be necessary to form a perfect record of a document. The pages are numbered consecutively, with the numbers corresponding with the numbers of the bonds or other documents." The use of the invention is thus described:

"When any of the coupons are presented and paid, they are canceled and *then* pasted, or otherwise secured in their proper place upon the pages. When the bond itself is paid, it is likewise attached to the place on the page provided for it." So, also, if coupons are lost, record may be made in the space allotted to them. The patent then claims:

"1. The preserving, filing and verifying of bonds, coupons, certificates and all similar documents, by the means and in the manner substantially as herein set forth.

"2. I claim the book or register constructed and used as and for the purposes set forth."

It will be seen, from an examination of the patent and from the foregoing statement, that the patentee describes a book having a particular arrangement, which is described in his specification and

illustrated in his drawing ; and that he has two claims—one for the book itself and the other for the use of the book.

The object of the book is stated to be "to prevent fraudulent practices" and "to present at all times a full and perfect history or record" of the bonds or transactions relating to them.

The characteristics of the alleged invention are that it is :

1. A book or *set* of books.
2. These are printed *or ruled.*
3. Each page corresponds in size and style with the bond and its coupons, or other documents, whatever it may be.
4. Each page has a heading showing (*a*) number, (*b*) date, (*c*) to whom issued, (*d*) when payable, (*e*) amount, (*f*) what issued for, (*g*) rate of interest, (*h*) when and where payable, (*i*) other facts necessary to form a perfect record.

The first claim appears to be for pasting either a bond or a coupon or a certificate, or any other document, whatever it may be, into a book, and afterwards *looking* at it or them to see if they are there.

The second claim is for the book itself, having pages printed or ruled and headed as above.

The complainant's alleged invention cannot be protected by letters patent. It is neither an art, machine, manufacture or composition of matter.

It is well settled that contrivances of the class of Munson's are not the proper subject of letters patent.

It is not an art, nor a machine, nor a manufacture, nor, in any sense, a composition of matter. It is, in fact, one of the many nondescript contrivances which have often been rejected by the Patent Office as unpatentable, but seems, in this instance, to have slipped through it. It is a method of keeping accounts of paid and unpaid bonds and coupons and other documents, and belongs to the system of bookkeeping and of keeping accounts.

In *Ex parte Dixon*, Law's Digest, p. 155, Sec. 8, the Commissioner says : "The application of certain combinations in composition of *ruled columns in sections* to accounts, to show a constant balance thereof, with statements of assets and liabilities on every page of the journal, without reference to a ledger, is not an invention of an art, machine or composition of matter, within section 6 of the Act of 1836. It is nothing more than a mode of presenting the

journal entries of a regular business in a regular form, and, therefore, not patentable."

Complainant's device is exactly of this character. His "ruled columns in sections" are intended to present the coupons of a bond in "tabular form," without reference to an index.

In *Ex parte Robert Dick*, 2 Off. Gaz., 147, upon application for an extension of a patent that *had been granted*, the Commissioner said: "The invention * * * consists of two parts. * * * The first relates to a method of keeping accounts by means of a 'type ledger' and a 'printed ledger' or record taken from the former at such intervals as may be desired; and the second part relates to an addressing machine, by means of which a strip of printed labels is gummed and then passed under shears, the movable blade of which cuts off the name of a subscriber and affixes it to the periodical by pressure thereon. * * * It will be seen that the first four claims relate exclusively to the first part of the invention. I have great doubt of the patentability of the subject matter to which these claims relate. Patents have been refused repeatedly for systems of keeping accounts, systems of penmanship, plans for alteration of bank checks and other like subjects, which are mere matters of notation. Dick's method of keeping accounts may be classed properly in the same category. *In my opinion, a patent should never have been granted for this portion of the invention.*"

It cannot be claimed that the idea of pasting papers into a book for preservation is new with the patentee. This has been done in scrap books from time immemorial. Nor can it be claimed that pasting papers with numbers on them upon the pages of a book which correspond with the number is patentable. Any child understands that. Nor can it be claimed that a page with numbered spaces is new. The same thing has been used for years in theatres, for checking off the numbered spaces of a diagram of the seats, in order to show their location. And when we add to this that books with numbered spaces have been previously used for the very purpose of preserving the coupons of bonds in regular order and system, there can be no novelty in the complainant's book.

The complainant relies, to sustain his patent, upon the case sustaining the patent for Hawes' Hotel Register (*Hawes vs. Washburn*, 5 O. G., 491). That case, however, if it can be sustained at all, went to the very verge of the law, and the present case is one not covered by the decision in it.

Hawes' hotel register patent was a patent for a register for the

names of guests at a hotel, having printed around the space in the centre of the page, where the guests' names were to be written, the advertisements of business men in the town where the register was kept. This patent was sustained on the ground that as a structure it was new; that no previous structure was proved to have existed consisting of a book with blank spaces in the centre of each page, surrounded by advertisements.

The substance of Judge WOODRUFF's decision in that case is that the combination of a blank space upon a page arranged to be used for one thing (writing guests' names), with printed matter (advertisements) upon the page used for another thing (giving information) is patentable, because through the proximity of the parts both will be likely to be used at once. The supposed new result is that by this combination *new people*, the traveling public, get information *at a new time*, namely, while they are writing their names.

With reference to this decision, three points are to be noted:

1. It was given in a charge to a jury, in the excitement of a trial, and should not have the weight of a carefully considered opinion in equity.

2. It has been held in a number of instances that the placing of advertisements in a new location, and in combination with structures with which they had not previously been combined, does not create a patentable subject matter.

In *Ex parte Orr*, 6 O. G., 77, the alleged invention was for an "improvement in envelopes" consisting of printing advertisements upon envelopes so that they might come to the notice of persons handling letters in the transmission and delivery of the mails and be specially called to the attention of the receivers of the letters. The Commissioner of Patents refused a patent for this device, saying:

"The alleged invention has nothing to do with an envelope as such. It relates only to the ornamentation of envelopes or the use of their surfaces as a medium of advertisement, and as such, is met by English references that will show substantially the same use and mode of ornamenting paper elsewhere. If this mode and style of ornamenting and printing paper is old, the application of it to envelopes is only a double use." Yet the same reasons might be urged for the support of this envelope patent as for the Hotel Register patent.

In *Ex parte Gould*, Supreme Court, District of Columbia, 5 O. G.,

621, the application for a patent was for an advertising device. The claim was for the combination of an advertisement or advertisements with an anchored balloon, as a conspicuous mode of calling attention to the same. The Court said:

"The mere discovery that it would be a good thing to attach advertisements permanently to balloons does not come within the law protecting a new and useful apparatus."

In the same case, upon a former appeal, the Commissioner said (4 O. G., 611): "It is a common right to place an advertisement in any eligible position for displaying it, where not legally prohibited; and there is no more ground for a patent on account of the selection of an anchored balloon than on account of tht selection of any other conspicuous object."

These decisions clearly show that the decision in *Hawes vs. Washburn* was not sufficiently considered. Stripped of all argument in its support, it amounted to nothing more than a patent for a new place for the arrangement and display of advertisements. As such it was clearly not patentable.

Persons might as well patent the painting of their advertisements upon rocks and other features of natural scenery, as was too frequently done some years since.

3. Even if the case of *Hawes vs. Washburn* was good law, it has no application to the present case. In that case the patent was sustained because the book as a whole, consisting of the combination of advertisements with the blank space for the writing of guest's names, was new. But in the present case, as we shall see, the structure and arrangement of the complainant's book was not new. Books had been previously used, ruled off in precisely the manner in which the defendants' books are ruled, and in substantially the manner in which the complainant's books are ruled, and identical with them in all respects, with the exception of the fact that the printed directions at the head of the pages indicating in what way the pages were to be used were in some respects different in the old books from those of the complainant and defendants.

No case can possibly be found which gives the slightest foundation for sustaining a patent for any such difference as this. If the hotel register, consisting of a blank page surrounded by advertisements, had been previously used for the purpose of keeping accounts in the blank spaces, and Hawes should have attempted to obtain a patent on it by printing at the top of the page the name of a hotel

and the words "Names of Guests," the case would be similar to the present. But that no patent could be sustained for a thing so plainly a matter of common right is too obvious to require discussion.

The complainant's device did not involve invention. It is a mere mode of use of a thing of common right, to make which, at the most, involved only judgment.

The *best* that the complainant himself can say of his system is that it makes reference to the place where a bond or coupon is put *simpler*. His arrangement does not add to the security of documents nor to the certainty of discovering whether bonds or coupons have been once paid or not.

It is plain that all of this is merely the result of judgment, and not invention.

This Court has repeatedly declared that the invention which deserves the protection of letters patent is of a much higher order.

> *Penn. R. R. vs. Locomotive Truck Co.*, 110 U. S., 490.
> *Morris vs. McMillin*, 112 U. S., 249.
> *Blake vs. San Francisco*, 113 U. S., 682.
> *Stephenson vs. Brooklyn and Crosstown R. R. Co.*, 114 U. S., 154.

If any protection could have been given to the complainant's contrivance, it would have been under the copyright law and not under the law of patents.

His Honor Judge WHEELER cited the cases of *Perris vs. Hexamer*, 99 U. S., 604, and *Baker vs. Selden*, 101 U. S., 99, but without explaining their application to the present case.

We do not understand that either of these cases is authority for the position that Munson's alleged invention is a proper subject for protection by letters patent.

In the case of *Perris vs. Hexamer*, it appears that the complainant had made certain maps according to a certain key, having a scheme of colors for certain parts of the lots and buildings delineated, and signs explaining the same; and the Court held that a copyright did not protect the complainant in the use of his key upon other maps, which were not a copy of the copyrighted maps. There was no intimation by the Court that the use of such a key could be protected by letters patent.

In the case of *Baker vs. Selden*, it seems that the complainant

had devised a certain system of bookkeeping, the explanations of which he embodied in a book with illustrations showing how the books should be ruled in his system.

He applied for a patent which, from the decision of the Court, seems never to have been granted, the Patent Office probably refusing a patent on the authority of the decisions which we have cited above. He also copyrighted his book, and the Court held that a copyright did not protect him in the *use* of his system by some one else, although it would protect his book from being copied. And the Court further said that the *use of his system* could only be protected, *if at all*, by letters patent. The Court, however, distinctly said that the question whether he could have a valid patent for such use was not before them, and they did not decide it.

The circumstances of this case also were different from that now presented to the Court.

It certainly cannot be pretended that any one is prevented from pasting bonds and coupons in books, or in any order which they please. The most that Munson can claim is the preserving of bonds in the manner which he points out *in books such as he describes.* The peculiar manner of ruling and printed directions are essential elements of his book. He cannot prevent the use of unruled blank-books in any manner whatever.

If this be so, then it seems to us that *Baker vs. Selden* is direct authority for the proposition that Munson can only be properly protected, if at all, by copyright.

No valid right of Munson's can be infringed except by the use of *books such as he describes.* A copyright in such a book, therefore, having his directions and method of ruling, would prevent the "multiplication of copies." This is the extent of Munson's right, and the proper method of securing it, if there is any such method in the law, was by copyright.

Munson's book is essentially different from Selden's. Selden devised a *system* of bookkeeping. Any one who used that *system* infringed. They need not use a *book* like Selden's.

Munson's idea was the use of a certain book, such as he describes. No one could infringe without using his *book*. If he had copyrighted his book he would have been protected. But his protection is not by a patent for it, nor can he have a patent broadly for pasting bonds and coupons in a blank-book in a convenient order.

The system of arrangement proposed by the complainant, if de-

serving of protection at all, could only have been protected under the copyright law.

The patent laws are designed to promote progress in the "useful arts" (Constitution of the United States, A. 1, Sec. 8).

The term "useful arts" is pre-eminently applicable to manufactures. The useful arts, as we understand them, are the arts which tend to the material enrichment of the country by increasing, improving or simplifying production, or by creating new or useful articles of production.

The English Statute of Monopolies, which was the basis of our own patent laws, used only the term "any manner of new manufacture" as indicating the subject matter of letters patent, and the Courts then held that this term was applicable not only to the thing made (which was the more obvious sense), but to the process of making (*Boulton vs. Bull*, 2 H. B. L., 402).

To prevent any ambiguity, our own statute uses words which need no construction, and allows to be patented any art, machine, manufacture or composition of matter, or any new or useful improvement thereof (R. S., Sec. 4886).

But it has never been suggested that our statute permitted the patenting, under either of these names, of anything not included under a liberal interpretation of the single word of the English Statute.

On the other hand, the object of the act of Congress securing to authors the exclusive right to their writings was mainly for the "promotion of science" (Constitution, Art. 1, Sec. 8).

Under this term protection has been denied to newspapers and price currents (*Clayton vs. Stone*, 2 Paine, 392) and to labels (*Coffien vs. Brunton*, 4 McLean, 517), such things being too ephemeral and variable in their nature.

By law copyright is granted to the "author, inventor, designer or proprietor of *any book*, map, chart, dramatic or musical composition, engraving, cut, print or paragraph or negative thereof, and of a painting, drawing, chromo, etc." (R. S., Sec. 4952).

Under this it has been held "that the work may be subject of copyright if the *plan, arrangement* and combination of its materials are new, though the materials may be drawn from many sources, but for the first time brought together in such plan, arrangement and combination" (*Gray vs. Russell*, 1 Story, 17).

"Copyright may be either in respect to the matter or the *arrangement*" (*Berfield vs. Nicholson*, 2 Stim. & Stu., 1).

"Any new and original *plan, arrangement* and combination of its materials will entitle the author to a copyright, even though the materials are not new" (*Emerson vs. Davies*, 3 Story, 778).

"A *book*, under the statute, need not be a book under the ordinary and common acceptation of the word" (*Clayton vs. Stone*, 2 Paine, 383).

"The literary property intended to be protected by the act is not to be determined by the size, form or shape in which it makes its appearance, but by the subject matter of the work" *(Id.)*.

"Any composition, large or small, which includes results of successive mental processes, rationally combined, whether it fill a great volume or be contained in a single small sheet, is within the denomination of a book."

Keene vs. Wheatley, 9 Amer. L. Reg., 68.

The subject of copyright is always something printed. The object of the thing printed need not always be *reading*.

It should be *useful*, and have a reasonable degree of permanence. It need not have its own use or utility simply in the *writing or reading of it*, but may be in the *use* to be made of it as directed by what is printed.

Thus a musical composition is useful as a direction to the reader *to do something else*.

A diary is useful as containing directions as to the methods of its use, and with convenient places for the insertion of memoranda, so arranged that the number of the day of the month is always an index.

Such methods of use are all analogous, and the latter ones strictly analogous, to the present case.

Munson's book, whatever utility it has, is simply in the use of the work "as directed in it;" and whatever novelty there is in it consists simply in the novelty of the *directions* or composition or printed matter.

Every printed work or book consists of two elements, the mental conception of the author and the embodiment of such mental conception in intelligible characters.

These characters need not be words. They may be signs or pictures or lines, or pictures combined with words.

These words and lines, as in the complainant's book, direct the

book to be used for a particular purpose, to wit, for fastening in the bonds or coupons, certificates of stock, &c.

A child's drawing book (numbers of which are yearly copyrighted) directs its use by drawing pictures in it after a given pattern.

A diary directs its use by its headings to its pages.

If the complainant had published a book entitled "A Method of More Conveniently Preserving Bonds and Their Coupons," and in such book had given a detailed description of his method, illustrating it by drawings and directing the use of a large blank book for the purpose, no doubt he could have copyrighted his composition and publication; and he can do the same when he makes his book large enough to fasten the coupons into it, and has his composition and letter-press all in the same book, so that *it is itself the illustration.*

The Act of 1865, Chap. 126, relating to copyrights, construes the word "book" to cover just such publications as that of the complainant. It says:

"In the construction of this act the word 'book' shall be construed to mean every volume and part of a volume, together with all maps, prints, and other engravings belonging thereto."

Munson's volume contains such engravings as a substantial part; and it matters not whether they are elaborate drawings or simple rulings into columns and squares.

Together with the headings they form a book.

It is, however, objected that this contrivance is not a book, because it will be different for each issue of bonds; and it is alleged that the heading will contain a different number, time of payment, amount, rate of interest, etc., etc., and that there can never be any *general edition* of the book, nor indeed that any two copies will be exactly alike.

But these are mere differences of detail. The general plan remains the same and can be copyrighted, like the plot of a story, which may be dramatized by the author alone (U. S. Rev. Stat., Sec. 4952).

There could, however, be a general edition of just such a book as the complainant describes in his patent, which would be applicable to all or nearly all possible issues of bonds and coupons, and could be generally used therefor.

The heading shown in the drawing of the complainant's patent

would be universally used, with a space of sufficient size for any bond and a hundred numbered spaces with a margin for more, if deemed advisable. Almost every possible species of coupon bonds could be thus accommodated.

It is no material part of the book that the bonds and coupons should *fit* these places, nor a material part that there should be no more spaces than coupons.

Hence, an edition could be issued which would be almost universally applicable; and, although not quite so neat, would be equally useful.

Its usefulness does not lie in the mere pasting of the bonds or coupons. That is the common right of all the world. No person can be restrained from pasting any bonds or coupons into a blank book, in any order which they shall think fit. The reading matter of the complainant's book is the only feature which has any possible utility, or which is asserted to have any.

The case of *Drury vs. Ewing*, 1 Bond, 540, is direct authority for our proposition that if the complainant's contrivance could have protection at all, it must have been by copyright, and not by patent.

SECOND POINT.

The Complainant's Patent is Anticipated.

The books in use, prior to Munson's patent, clearly show that there was nothing novel in the book or its arrangement, which he made.

The witness William E. Warren testifies to the use of books by the Delaware, Lackawanna and Western Railroad Company, between the years 1853 and 1858, for similar purposes to those described in the complainant's patent.

The peculiarities of Warren's books were these (see Defendants' Exhibits A1, A2 and A3):

The books of the Delaware and Lackawanna Company were of large size and each page was ruled into rectangular spaces, corresponding in size with the coupons of the bonds of said company (Record, p. 34, Q. 6). These spaces were numbered (Q. 40). At the head of each series of coupons (*i. e.*, for coupons of each six

months), was written, (*a*) the title of the company, (*b*) description of the bond, (*c*) when payable (Record, p. 35, Q. 7).

One of the bonds of the company was pasted in front of each book (Q. 37). The numbering of the spaces was printed (Qs. 41–48).

The objects of these books were:

1. To tell the amount of the coupons paid at a given date (Record, Q. 6).

2. To record the loss of the coupons (*Id.*), name and address of the holder were often marked in the coupon space (Q. 49). And when bonds were mislaid, all the squares were marked (Q. 50).

3. By reference to the check-book, to show to whom the coupons were paid (Qs. 32–35).

These books of the Delaware, Lackawanna and Western Railroad Company were substantially similar to those used by the defendants in this case, and which are claimed by the complainant to be substantially the same as his. In the defendants' books alternate pages are ruled into spaces of rectangular shape, corresponding to the size of the coupons. These pages are headed showing (*a*) class of bonds, (*b*) when due, (*c*) amount, (*d*) number (Record, p. 9, Qs. 7–8).

The pages are ruled for coupons *only;* not for bonds.

The pages do not correspond in size or style with the bond *and* its coupons, as is claimed and shown in the case of the complainant's book.

The books of the defendants are, in their construction and method of ruling the pages, in all respects like the books of the Delaware, Lackawanna and Western Railroad Company, the only difference between the two books being that the *printed matter* at the head of the pages is somewhat different, and that the mode of *use* of the books was slightly changed. The books themselves are the same; but in the one case all the coupons of a given date are pasted on one page, and in the other all the coupons of a given *bond* are pasted on one page. The fact that the heading was not printed on every page in the case of the Delaware, Lackawanna and Western books, but only at the head of a series of coupons, is unimportant. If the series happened to be small enough all would have been on one page, and then every page would have been headed.

John O'Brien also testifies that between the years 1856 and 1866 similar books were used, for the same purpose as the books of

the Delaware, Lackawanna and Western Railroad Company, by the Second Avenue Railroad Company of New York City.

The features of O'Brien's books were as follows:

1. Each series of coupons was designated at the head of the series (Record, p. 45, Q. 15).

2. Whether each page was headed depended on the number of coupons (Record, p. 45, Q. 16).

3. The bonds are not yet due, and so have never been pasted in the book.

O'Brien's books were used for the same purposes as Warren's.

These books substantially anticipate complainant's alleged invention. Coupons are preserved in the same way by pasting them into a book; and there is no more novelty in pasting in bonds and their coupons than any "other document."

Spaces were made upon the pages for the coupons, and these spaces numbered to correspond, the difference being that in these books of Warren and O'Brien the coupons of one bond were not to be pasted upon one page, and which, as we have shown, is immaterial, it being only a mode of use of the book. The book was arranged and constructed so as to be capable of use for the same purpose and in the same way and with equal facility as the defendant's books.

There is no advantage in Munson's method of use over Warren's. The only difference would be that for finding out certain facts, Warren's system and mode of use would be the best; and for finding out certain other facts, Munson's system would have been the most convenient.

In Warren's system, to get a complete record of a particular bond, a number of books would have to be referred to; but to find how many coupons had been paid at a given date, or what coupons had been paid, only one book would have to be referred to. In Munson's system the reverse would be the case. The transaction in a particular bond would be shown by a single book or page, but the amount of coupons paid at a given time would have to be learned by consulting many books.

There is no economy in size in Munson's case. In both cases the books would have to have places for all the coupons and all the bonds. But Munson's requires space on the same page for the

bond, and Warren's plan does not require books to be prepared for all the years, except as they are wanted; though this could be done with equal ease as in Munson's case.

But, if the Court should be of the opinion that the Warren and O'Brien books do not anticipate the complainant's device, yet it appears by uncontradicted testimony that the precise system pursued by the defendants, and precisely similar books were used long prior to the complainant's patent.

As the Court will remember, the defendants' books have each alternate page ruled for a set of coupons of a particular bond, and they used the blank page opposite these rule spaces to paste the bond into the book, which, as we contend, is not the complainant's device, his bond and coupons all being on the same page.

The witness Hendricks (Record, p. 85), testified before the Master that the United States Treasury Department had in use from 1842 down to 1866, a set of books exactly like the books used by the defendants, in which each alternate page of the books was ruled with spaces for the coupons of a particular bond, and the page opposite was left blank for the pasting in of the bond, if desired; though as a fact no bonds were ever put in the books (Record, pp. 85-88).

This testimony is absolutely uncontradicted; and it cannot be pretended that it does not anticipate the complainant's invention. So that if the defendants' books are an infringement upon the patent of the complainant, then the Treasury books, being the precise counter-part of the defendants' books, embodied the same invention.

It will probably be contended that as this testimony was not taken for use before the final hearing and interlocutory decree, but came into the case after the interlocutory decree had been entered, it cannot now be used to set aside the interlocutory decree.

There can be no doubt that the case is open at any time before final decree for a reconsideration of the matters passed upon before entering the interlocutory decree. It has been so decided over and over again (see *Spill vs. The Celluloid Manufacturing Co.*, 21 Fed. Rep., 634).

Relying upon these cases, the defendants made a motion as soon as this testimony was taken for a rehearing of the case upon such testimony. Such rehearing was never actually had; but, by stipulation, it was agreed that said motion might be considered as having been heard and denied by his Honor Judge WHEELER (Record, page 124). So that no adjudication upon the force of this testi-

mony in relation to the validity of the patent has ever been actually made.

It may be conceded that if this testimony had been objected to as incompetent for the purpose of contesting the validity of the patent because it was introduced before the Master and not before the interlocutory decree was rendered, such objection would be fatal, and the testimony could not be considered unless, upon application, the Court opened the case for the taking of further proofs, and granted a rehearing upon such proofs (*Wooster vs. Thompson* 114 U. S., 104).

But such is not the case here. This testimony as to the date of use and existence of these books was brought out by the complainant's counsel, upon cross-examination of the witness Hendricks. No objection was made to it by him, and no motion made by him to strike it out.

Neither can a valid objection be urged to its consideration, on the ground that it does not relate to a defense pleaded in the answer; for it has been held by this Court that such testimony will be considered, if introduced without objection on the part of the complainant, even if it does not relate to a pleaded defense.

Roemer vs. Simon, 95 U. S., 214.
Loom Co. vs. Higgins, 105 U. S., 596.

Therefore, we submit that with this uncontradicted testimony in the record, unobjected to and introduced by the complainant himself, it is competent for the Court now to pass upon the question as to its effect upon the validity of the complainant's patent; and if it is considered, as we think it must be considered, there can be but one answer to the question.

If the defendants infringe the complainant's patent, then the complainant's patent is anticipated by these treasury books, which are the precise counterpart of these used by the defendants.

THIRD POINT.

The defendants do not infringe the complainant's patent.

If, however, the Court should be of the opinion that the complainant can have a valid patent for his alleged invention, yet we contend that he must be limited to the method which he shows and illustrates; and, from a comparison of the drawings of his patent, in which the pages of his book are so ruled as to contain both the bond and its coupon, the books of the defendants do not infringe, for the reason that the coupons and bonds are not placed upon the same page, and their books are not ruled in the same manner as those of the complainant.

The defendants preserve all their coupons on one page and their bonds on the opposite page, which is a different method from that of the complainant.

APPEAL OF THE COMPLAINANT.

The complainant appeals from the final decree of the Court awarding him six cents damages and costs.

We, submit, however, that on the evidence taken before the Master, the decree could not have been different.

The defendants, in their testimony, introduced evidence of the different methods in use prior to that patented to the complainant.

These were (A) the *en masse* system; (B) the Warren system; (C) the Treasury system.

The *en masse* system was a system of preserving coupons in packages, either with or without classification.

The Warren system was a system of books ruled like those of the defendants, but in which a different order of pasting coupons was used, the coupons of a single date of maturity being placed together, instead of the coupons of a single bond.

The Treasury system was also a system of books in which the pages of the books were ruled, but on each page in these were placed all the coupons of a given bond in their order, as originally attached to the bond, *precisely as in complainant's and defendants' books.* But the bonds themselves were not fastened in the books,

though there was a blank page opposite each sheet of coupons, which *could have been so used.*

The only evidence upon the question of comparison between the Munson system and the Warren and Treasury systems was that as compared with these there was *absolutely no pecuniary advantage in favor of Munson;* and the Master, however, for the purpose of arriving at his conclusion, compared the Munson system with the *en masse* system, which was least like the Munson system of those existing prior to it.

The Master, therefore, erred in this respect.

It was positively proved, and by testimony absolutely uncontradicted, that the defendants derived *no profits whatever from the use of the system used by them.* This testimony was given by Mr. Carroll, who has been in charge of the bond and coupon department of the city. (Record, pp. 57–61).

The complainant had no testimony based on any comparison between the Munson system and the Warren and Treasury systems whatever.

But the complainant called the witness, Amos T. Hall, and he testified as to a comparison between the Munson system and the *en masse* system. His entire testimony upon this point is as follows (Record, p. 102): "Q. 10. What, in your judgment, would be the advantage or benefit in money for the use of the plan in question? A. The answer to that question is, of course, an *estimate.* In my *opinion,* the saving of labor of an accountant would amount to at least a half a dollar a bond."

Such an estimate is not *only wholly incompetent.*

Garretson vs. Clark, 111 W. S., 127.
Dobson vs. Carpet Co., 114 W. S., 445.
Reed vs. Laurence, 29 F. R., 920.
Fay vs. Allen, 30 F. R., 447,

But, being based on a comparison *only* with the *most unlike* and *least advantageous* of the prior systems, did not meet the issue.

We therefore submit that his Honor Judge WALLACE, was quite right in stating, as he did, that the standard of comparison adopted by Mr. Hall and accepted by the Master, was a fallacious standard of comparison, and that the opinion expressed by Mr. Hall was not founded on any specific or definite basis of fact.

The entire argument of the defendants on this point is so completely stated by his Honor Judge WALLACE, in his opinion, that it is

not necessary for us to restate it here. But we may simply refer to that opinion (Record, p. 125), as stating the defendants' case.

In conclusion, therefore, we urge that the case should be remanded to the Circuit Court, with directions to dismiss the bill, or in default of that, that the complainant's appeal should be dismissed.

Respectfully submitted.

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